



भारत का राजपत्र The Gazette of India

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No. 6] NEW DELHI, SATURDAY, FEBRUARY 6, 1993/MAGHA 17, 1914

इस भाग में निम्न पृष्ठ संख्या दी जाती है जिससे कि वह अलग संकलन के रूप में
रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a
separate compilation

भाग II—खण्ड 3—उप-खण्ड (H)
PART II—Section 3—Sub-Section (H)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutons issued by the Ministries of the Government of India (other than
the Ministry of Defence)

कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय
(पेंशन और पेंशनभोगी कल्याण विभाग)
नई दिल्ली, 31 दिसम्बर, 1992

का.आ. 206—राष्ट्रपति, संविधान के अनुच्छेद 148 के खण्ड (5) के साथ पठित उसके अनुच्छेद 309 के परन्तुक द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, और भारतीय लेखा परीक्षा तथा लेखा विभाग में सेवा कर रहे व्यक्तियों के संबंध में नियंत्रक महालेखा परीक्षक से परामर्श करने के पश्चात् केन्द्रीय सिविल सेवा (पेंशन) नियम, 1972 का और संशोधन करने के लिए निम्नलिखित नियम बनाते हैं, अर्थात्:—

1. (1) इन नियमों का संक्षिप्त नाम केन्द्रीय सिविल सेवा (पेंशन) चौथा संशोधन नियम, 1992 है।

(2) ये राजपत्र में प्रकाशन की तारीख को प्रवृत्त होंगे।

2. केन्द्रीय सिविल सेवा (पेंशन) नियम, 1972 में, नियम 54 के उप नियम (6) के परन्तुक में, “पुत्र की दशा में दसवीं वर्ष की आयु और पुत्री की दशा में तीस वर्ष की

आयु” शब्दों के स्थान पर निम्नलिखित शब्द रखे जाएंगे,
अर्थात्:—

“पच्चीस वर्ष”
[संख्या 1/10/92-पी.एण्ड पी. डब्ल्यू. (ई)]
स्वर्ण दास, उप सचिव

पाद-टिप्पण:—केन्द्रीय सिविल सेवा (पेंशन) नियम, 1972 का आ. 934 तारीख 1-4-72 के रूप में प्रकाशित किए गए थे। नियमों का चतुर्थ संस्करण (जुलाई 1988 तक संशोधित) 1989 में मुद्रित किया गया था। उक्त नियमों के पश्चात्तर्ती संशोधन पेंशन और पेंशनभोगी कल्याण विभाग की निम्नलिखित अधिसूचनाओं द्वारा किए गए:—

क्र.सं.	अधिसूचना संख्या	तारीख
1	2	3
1.	का.आ.सं. 254	4-2-89
2.	का.आ.सं. 970	6-5-89
3.	का.आ.सं. 2467	7-10-89
4.	का.आ.सं. 899	14-4-90

1	2	3	S. No.	Notification No.	Date
5.	का.आ.सं. 1454	26-5-90	3.	S. O. No. 2467	7-10-1989
6.	का.आ.सं. 2329	8-9-90	4.	S. O. No. 899	14-4-1990
7.	का.आ.सं. 3269	7-12-90	5.	S. O. No. 1454	26-5-1990
8.	का.आ.सं. 3270	8-12-90	6.	S. O. No. 2329	8-9-1990
9.	का.आ.सं. 3273	8-12-90	7.	S. O. No. 3269	7-12-1990
10.	का.आ.सं. 409	9-2-91	8.	S. O. No. 3270	8-12-1990
11.	का.आ.सं. 464	16-2-91	9.	S. O. No. 3273	8-12-1990
12.	अधिसूचना सं. 7/14/90-पी.एण्ड पी.डब्ल्यू. (एफ.)	23-8-91	10.	S. O. No. 409	9-2-1991
13.	अधिसूचना सं. 4/15/88-पी.एण्ड पी.डब्ल्यू. (डी)	9-10-91	11.	S. O. No. 464	16-2-1991
14.	अधिसूचना सं. 7/10/89 पी.एण्ड पी.डब्ल्यू. (एफ.)	28-11-91	12.	Notification 7/14/90-P&PW(F)	23-8-1991
15.	एफ. 28/40/88-पी.एण्ड पी. डब्ल्यू. (बी)	9-1-92	13.	Notification 4/15/88-P&PW(D)	9-10-1991
16.	एफ. 38/164/88-पी. एण्ड पी. डब्ल्यू. (एफ.)	4-2-92	14.	Notification 7/10/89-P&PW(F)	28-11-1991
17.	एफ. 43/4/92-पी. एण्ड पी. डब्ल्यू. (जी)	27-11-92	15.	F. 28/40/88-P&PW(B)	9-1-1992
			16.	F. 38/164/88-P&PW(F)	4-2-1992
			17.	F. 43/4/92-P&PW(G)	27-11-1992

वित्त मंत्रालय

(राजस्व विभाग)

नई दिल्ली, 29 दिसम्बर, 1992

मुख्यालय स्थापना

MINISTRY OF PERSONNEL, P. G. & PENSIONS

(Department of Pension and P. W.)

New Delhi, the 31st December, 1992

S.O. 206.—In exercise of the powers conferred by the proviso to article 309 read with clause (5) of article 148 of the Constitution, and after consultation with the Comptroller and Auditor-General in relation to persons serving in the Indian Audit and Accounts Department, the President hereby makes the following rules further to amend the Central Civil Services (Pension) Rules, 1972, namely :—

1. (1) These rules may be called the Central Civil Services (Pension). Fourth Amendment Rules, 1992.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Central Civil Services (Pension) Rules, 1972 in rule 54. in the proviso to sub-rule (6), for the words "twenty one years in the case of the son and thirty years in the case of the daughter", the following words shall be substituted, namely :—

"twenty-five years"

[No. 1/10/92-P&PW(E)]

SWARN DASS, Dy. Secy.

FOOT NOTE :—The Central Civil Services (Pension) Rules, 1972 were published as S.O. No. 934 dated 1-4-1972. The Fourth Edition (Connected upto July, 1988) of the rules was printed in 1989. The rules were subsequently amended vide Department of Pension & Pensioners' Welfare Notifications given below :—

S. No.	Notification No.	Date
1.	S. O. No. 254	4-2-1989
2.	S. O. No. 970	6-5-1989

का.आ. 207—केन्द्रीय सरकार, केन्द्रीय राजस्व अधिनियम बोर्ड, 1963 (1963 की सं. 54) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय राजस्व सेवा (सीमा-शुल्क और केन्द्रीय उत्पाद-शुल्क) के अधिकारी श्री बी.सी. रस्तोगी को जो हमसे पूर्व अपवचना रोधी, नई दिल्ली में महानिदेशक के पद पर तैनात थे तारीख 14 दिसम्बर, 1992 के पूर्वानुज्ञान में और अगला आदेश होने तक केन्द्रीय उत्पाद-शुल्क एवं सीमा-शुल्क बोर्ड में सदस्य नियुक्त करती है।

[फा.सं. ए-19011/7/92-प्रशा. I]

रमेश कुमार, अधर सचिव

MINISTRY OF FINANCE

(Department of Revenue)

New Delhi, the 29th December, 1992

HEADQUARTERS ESTABLISHMENT

S.O. 207.—In exercise of the powers conferred by sub-section (2) of Section 3 of the Central Board of Revenue Act, 1963 (54 of 1963), the Central Government hereby appoints Shri B. C. Rastogi, an officer of the Indian Revenue Service (Customs & Central Excise) and formerly posted as Director General Anti-Evasion, New Delhi, as Member of the Central Board of Excise & Customs with effect from the forenoon of the 14th December, 1992 and until further orders.

[F. No. A-19011/7/92-Ad.I]

RAMESH KUMAR, Under Secy.

(आर्थिक कार्य विभाग)

(बैंकिंग प्रभाग)

नई दिल्ली, 11 जनवरी, 1993

का.ग्रा. 208—राष्ट्रीयकृत बैंक (प्रबंध और प्रकीर्ण उपबंध) स्कीम, 1970 के खण्ड 8 के उपखण्ड (1) के साथ पठित खण्ड 3 के उपखण्ड (क) के अनुसरण में, केन्द्रीय सरकार, भारतीय रिजर्व बैंक से परामर्श करने के पश्चात् एतद्द्वारा श्री रमेश मिश्र, वर्तमान मुख्य महाप्रबंधक स्टेट बैंक आफ बीकानेर एण्ड जयपुर को उनके कार्यभार ग्रहण करने की तारीख से पांच वर्ष की अवधि के लिए यूनाइटेड बैंक आफ इंडिया के पूर्णकालिक निदेशक (कार्यकारी निदेशक के रूप में पदनामित) के रूप में नियुक्त करती है।

[सं. एफ. 9/1/92-बी.ओ. I]

एम.एस. सीतारामन, अवसर सचिव

(Department of Economic Affairs)

(Banking Division)

New Delhi, the 11th January, 1993

S.O. 208.—In pursuance of sub-clause (a) of clause 3 read with sub-clause (1) of clause 8 of the Nationalised Banks (Management and Miscellaneous Provisions) Scheme, 1970, the Central Government, after consultation with the Reserve Bank of India, hereby appoints Shri Ramesh Mishra, presently Chief General Manager, State Bank of Bikaner and Jaipur, as a whole-time Director (designated as the Executive Director) of the United Bank of India for a period of five years commencing with the date of his taking charge.

[F. No. 9/1/92-B.O.I.]

M. S. SEETHARAMAN, Under Secy.

नई दिल्ली, 14 जनवरी, 1993

का.ग्रा. 209 — भारतीय स्टेट बैंक (अनुषंगी बैंक) अधिनियम, 1959 (1959 का 38) की धारा 26 की उपधारा (2क) के साथ पठित धारा 25 की उपधारा (1) के खंड (गक) के अनुसरण में केन्द्रीय सरकार एतद्द्वारा स्टेट बैंक आफ इन्दौर, प्रधान कार्यालय, इन्दौर के मुख्य लिपिक, श्री मोहन कृष्ण शुक्ल को स्टेट बैंक आफ इन्दौर के कर्मचारियों में से, जो कर्मकार हैं, 14 जनवरी, 1993 से 13 जनवरी, 1996 को समाप्त होने वाली तीन वर्ष की अवधि के लिए स्टेट बैंक आफ इन्दौर के निदेशक बोर्ड में निदेशक नियुक्त करती है।

[सं. एफ. 15/2/87-आई आर.]

सत पाल भाटिया, अवसर सचिव

New Delhi, the 14th January, 1993

S.O. 209.—In pursuance of clause (ca) of sub-section (1) of section 25 read with sub-section (2A) of section 26 of the State Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959), the Central Government hereby appoints Shri Mohan Krishna Shukla, Head Clerk, State Bank of Indore, Head Office, Indore as a director on the Board of the State Bank of Indore from among the employees of the State Bank of

Indore who are workmen for a period of three years commencing on 18th January, 1993 and ending with 13th January, 1996.

[No. F. 15/2/87-IR]

S. P. BHATTIA, Under Secy.

वाणिज्य मंत्रालय

मसाला बोर्ड (गुणवत्ता चिह्नान्कन)

नई दिल्ली, 19 जनवरी, 1993

का.ग्रा. 210 — मसाला बोर्ड अधिनियम, 1986 (1986 का 10) की धारा 39 के अधीन प्रदत्त शक्तियों का प्रयोग करते हुए, मसाला बोर्ड, केन्द्रीय सरकार की पूर्वानुमति से, मसाला बोर्ड (गुणवत्ता चिह्नान्कन) विनियम, 1992 में निम्नलिखित संशोधन करता है:—

1. (1) इन विनियमों को मसाला बोर्ड (गुणवत्ता चिह्नान्कन) (संशोधन) विनियम, 1993 नाम दिया जाएगा।

(2) ये सरकारी राजपत्र में प्रकाशन की तिथि में लागू होंगे।

II. मसाला बोर्ड (गुणवत्ता चिह्नान्कन) विनियम 1992 में:—

(अ) विनियम (3) में वर्तमान उपविनियम (10) के स्थान पर निम्नलिखित रखा जाएगा अर्थात्:—

“(10) अनुमोदन एवं अनुमोदन के निवर्तन के मामले में, पैककर्ता द्वारा किए गए आवेदन पर यूनिट का पुनः मूल्यांकन किया जाएगा।

(आ) विनियम 9 के स्थान पर निम्नलिखित रखा जाएगा अर्थात् —

“अपील:—यूनिट के अनुमोदन, अनुमोदन के निवर्तन या अनुमोदन के निवर्तन में एक पैककर्ता दुःखी हो तो, पत्राचार का प्राप्त के तीस दिनों के अन्तर्गत, वाणिज्य मंत्रालय, भारत सरकार को अपील कर सकता है”।

[फाइल सं. एम डी/एस बी एल/01/93]

टी. नंदकुमार, अध्यक्ष

MINISTRY OF COMMERCE

[Spices Board (Quality Marketing)]

New Delhi, the 19th January, 1993

S.O. 210.—In exercise of the powers conferred by the section 39 of the Spices Board Act, 1986 (10 of 1986), the Spices Board, with the previous approval of the Central Government, hereby makes the following amendments to the Spices Board (Quality Marking) Regulations, 1992, namely:—

1. (1) These regulations may be called the Spices Board (Quality Marking) (Amendment) Regulations, 1993.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Spices Board (Quality Marking) Regulations, 1992,—

(a) in regulation 3 for the existing sub-regulation (10) the following shall be substituted, namely :—

“(10) in the case of non approval and withdrawal of approval, the unit shall be re-assessed on an application made by the packer”.

(b) for regulation 9 the following shall be substituted, namely :—

“Appeal :—A packer aggrieved by non approval, suspension of approval or withdrawal of approval of a unit may appeal within thirty days of receipt of the communication to the Ministry of Commerce, Government of India”.

[File No. : MD/SBL/01/93]
T. NANDAKUMAR, Chairman

नागरिक प्रति, उपभोक्ता मामलों और सार्वजनिक वितरण प्रशासन

भारतीय मानक ब्यूरो

नई दिल्ली, 05 जनवरी, 1993

क्र.भा. 211.—भारतीय मानक ब्यूरो नियम, 1987 के नियम 7 के उपनियम (1) की खंड (ख) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि जिस/जिन भारतीय मानक/मानकों, का/के विवरण नीचे अनुसूची में दिया गया है/दिए गए हैं, वह/स्थापित हो गया है/हो गए हैं।

अनुसूची

क्रम सं.	स्थापित भारतीय मानक (कों) की संख्या वर्ष और सीपेक	नए भारतीय मानक द्वारा प्रतिरूपित भारतीय मानक अथवा मानकों, यदि कोई हों, की सं. और वर्ष	स्थापित तिथि
(1)	(2)	(3)	(4)
1.	आईएस 6397: 1992 दूध के पाश्चुरीकरण की संहिता (पत्रिका पुनरीक्षण)	आई एस 6397: 1971	1992 12 31
2.	आईएस 13688: 1992 पाश्चुरीकृत दूध—विशिष्ट	---	1992 12 31
3.	आईएस 13689: 1992 बटर ऑयल (मक्खन तेल) विशिष्ट	---	1992 12 31
4.	आईएस 13690: 1992 पाश्चुरीकृत मक्खन—विशिष्ट	---	1992 12 31

इन मानकों की प्रतियां भारतीय मानक ब्यूरो, मानक भवन 9 बहादुर शाह जकर मार्ग, नई दिल्ली-110002 और क्षेत्रीय कार्यालयों बम्बई, कलकत्ता, चण्डीगढ़ तथा मद्रास और शाखा कार्यालयों मद्रासवाबाद, बंगलौर, भोपाल, भुवनेश्वर, गुवाहाटी, हैदराबाद, जयपुर, कानपुर, पटना और त्रिवेन्द्रम में बिक्री हेतु उपलब्ध हैं।

[सं. के. प्र. वि./13: 2]

एन. श्रीनिवासन, अपर महानिदेशक

MINISTRY OF CIVIL SUPPLIES CONSUMER AFFAIRS & PUBLIC DISTRIBUTION

BUREAU OF INDIAN STANDARDS

New Delhi, the 05th January, 1993

S.O. 211.—In pursuance of clause (b) of Sub-rule (1) of Rule 7 of the Bureau of Indian Standards Rules 1987, The Bureau of Indian Standards hereby notifies that the Indian Standard(s), Particulars of which is/are given in the Schedule hereto annexed, has/ have been established on the date indicated against each :

THE SCHEDULE

Sl. No.	No. Year and Title of the Indian Standard(s) Established	No. and year of the Indian Standard or Standards, if any, superseded by the new Indian Standard	Date of Establishment
(1)	(2)	(3)	(4)
1.	IS : 6397 : 1992 Code for pasteurization of milk (First Revision).	IS 6397 : 1971	1992-12-31
2.	IS 13688 : 1992 Pasteurized Milk—Specification	—	1992-12-31
3.	IS 13689 : 1992 Butter oil (Butter Fat)—Specification	—	1992-12-31
4.	IS 13690: 1992 Pasteurized Butter—Specification	—	1792-12-31

Copies of these Indian Standards are available for sale with the Bureau of Indian Standards, Manak Bhavan, 9 Bahadur Shah Zafar Marg, New Delhi-110002 and Regional Offices : Bombay, Calcutta, Chandigarh, and Madras and also Branch Offices Ahmedabad, Bangalore, Bhopal, Bhubaneswar, Guwahati, Hyderabad, Jaipur, Patna and Trivandrum.

[No. CMD/13 : 2]

N. SRINIVASAN, Addl. Director General

उद्योग मंत्रालय

(औद्योगिक विकास विभाग)

प्रादेश

नई दिल्ली, 16 दिसम्बर, 1992

का.प्रा. 212—केन्द्रीय सिविल सेवा (वर्गीकरण, नियंत्रण तथा अपील) नियम, 1965 के नियम 9 के उप-नियम (2) नियम 12 के उप-नियम (2) के खण्ड (ख) और नियम 24 के उप-नियम (1) के अनुसरण में राष्ट्रपति, भारत सरकार, औद्योगिक विकास विभाग के ता. 28 नवम्बर, 1985 के आदेश सं. का.प्रा. 5594 में एतद्वारा निम्नलिखित संशोधन करते हैं:—

उक्त आदेश की धनसूची में

- (1) "सामान्य केन्द्रीय सेवा, ग्रुप ख" से संबंधित भाग II कालम 1 के अन्तर्गत प्रविष्टि में संकेताक्षर तथा आंकड़े "900 रु." के के स्थान पर संकेताक्षर तथा आंकड़े "2900 रु." रखे जायेंगे, और
- (2) "सामान्य केन्द्रीय सेवा ग्रुप ग" से संबंधित भाग II में संकेताक्षर तथा आंकड़े "700 रुपये" के स्थान पर संकेताक्षर तथा आंकड़े "2600 रुपये" रखे जायेंगे।

[सं. 3/8/92-संकेताक्षर]

ई. एम. मूर्ति, संयुक्त सचिव

मुख्य आदेश भारत के राजपत्र, भाग II खण्ड 3, उप-खण्ड (ii) दिनांक 14 दिसम्बर, 1985 में का.प्रा. 5594, दिनांक 28 नवम्बर, 1985 के तहत प्रकाशित किया गया था।

MINISTRY OF INDUSTRY

(Department of Industrial Development)

ORDER

New Delhi, the 16th December, 1992

S.O. 212.—In pursuance of sub-rule (2) of rule 9, clause (b) of sub-rule (2) of rule 12 and sub-rule (1) of rule 24 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, the President hereby makes the following amendments in the Order of the Government of India in the Department of Industrial Development, number S.O. 5594, dated the 28th November, 1985, namely:—

In the Schedule to the said Order—

- (i) in part I relating to "General Central Service, Group B", in the entry under column 1, for the

MINISTRY OF ENVIRONMENT AND FORESTS

New Delhi, the 8th January, 1993

S.O. 813.—In pursuance of Section 5, read with sub-section (2) of Section 5(A) of the Prevention of Cruelty to Animals Act, 1960 (59 of 1960), the Central Government hereby notifies the names of the following persons chosen as the members of the Animal Welfare Board of India under clauses (f) and (g) of sub-section (1) of Section 5 of the said Act and for that purpose amends the Government notification No. S.O. 222(E), dated the 11th March, 1992 as follows, namely:—

In the said notification after serial number 23, the following serial numbers and the entries shall be added, namely:—

- "24. Shri O.P. Sareen
Honorary Secretary,
Haryana Society for the Prevention of Cruelty to Animals, 794
Housing Board Colony, Ambala Cantt. -133 001.
25. Dr. Kailash Marwah
Member,
Nagpur Society for the Prevention of Cruelty to Animals, 25,
Raj Nagar, Katol Road, Nagpur-440 013.

abbreviation and figures "Rs. 900", the abbreviation and figures "Rs. 2900" shall be substituted; and

- (ii) in Part II relating to "General Central Service Group 'C'", in the entry under column 1, for the abbreviation and figures "Rs. 700" the abbreviation and figures "Rs. 2600" shall be substituted.

[No. 3/8/92-Vig.]

E. N. MURTHY, Jr. Secy.

Foot Note :—The Principal Order was published in the Gazette of India, Part II, Section 3, Sub-section (ii) dated the 14th December, 1985 vide S.O. 5594 dated the 28th November, 1985.

पर्यावरण और वन मंत्रालय

नई दिल्ली, 8 जनवरी, 1993

का.प्रा. 213—जीवजस्तु क्रूरता निवारण अधिनियम, 1960 (1960 का 59) की धारा 5क की उप-धारा (2) के साथ पठित धारा 5 के अनुसरण में, केन्द्र सरकार एतद्वारा उपरोक्त अधिनियम की धारा 5 की उप-धारा (1) के खण्ड (ख) और (घ) के अधीन भारतीय वन्य जीवन बोर्ड के सदस्यों के रूप में चने गए निम्नलिखित व्यक्तियों के नामों की अधिसूचित करती है और उस प्रयोजन के लिए सरकार की दिनांक 11 मार्च, 1992 की अधिसूचना संख्या का.प्रा. 222(ई) में निम्नलिखित संशोधन करती है, अर्थात्:—

उपरोक्त अधिसूचना में:—

क्रम संख्या 23 के पश्चात् निम्नलिखित क्रम संख्याएं और प्रविष्टियां जोड़ी जाएंगी अर्थात्:—

- | | |
|--------------------------------|-------------------------|
| 24. श्री ओ.पी. सरीन | धारा 5(1) (क) के |
| अर्चनिक सचिव, हरिमाणा | तहत चयनित सदस्य |
| जीवजस्तु क्रूरता निवारण | (अक्तूबर, 1992 के 29वें |
| सोसायटी, 794 हाउसिंग | दिन से) |
| बोर्ड कालोनी, | |
| ग्राम्बाला कैट—133001 | |
| 25. डा. कैलाश मरवाह, | धारा (1)(घ) के |
| सदस्य, नागपुर जीवजस्तु क्रूरता | तहत चयनित सदस्य |
| निवारण सोसायटी, | (नवम्बर, 1992 के |
| 25, राज नगर, कटोल रोड, | 13वें दिन से)" |
| नागपुर-440 013 | |

[का. संख्या 1-9/91 जीवजस्तु, कल्याण]

एस.एस. हतूरकर, संयुक्त सचिव

पाठ टिप्पणी

प्रमुख अधिसूचना 11 मार्च, 1992 के का.प्रा. संख्या 222(ई) के तहत प्रकाशित की गई थी और बाव में इसमें (1) 25 जुलाई, 1992 के का.प्रा. संख्या 1967 तथा (2) दिनांक 7 नवम्बर, 1992 के का.प्रा. संख्या 2795 के तहत संशोधन किया गया था।

[No. 1-9/91-AW]

S. S. HASURKAR, Jr. Secy.

Foot Note—The principal Notification was published vide S.O. No. 222(E) dated 11th March, 1992 and subsequently amended vide S.O. No. 1967 dated 25th July 1992 and S.O. No. 2795 dated 7th November, 1992.

पेट्रोलियम और प्राकृतिक गैस मंत्रालय

नई दिल्ली, 5 जनवरी, 1993

1 2 3 4 5 6

का.आ. 214 --केन्द्रीय सरकार ने, पेट्रोलियम और खनिज पाइप-लाइन 1 भूमि में उपयोग के अधिकार का भर्जन अधिनियम, 1962 (1962 का 50) जिसे इसमें इसके पश्चात्, उक्त अधिनियम कहा गया है, की धारा 3 की उपधारा (1) के अधीन जारी की गई भारत के राजपत्र, भाग 2, खंड 3, उपखंड (ii), तारीख 18 अप्रैल, 1992 में प्रकाशित भारत सरकार के पेट्रोलियम और प्राकृतिक गैस मंत्रालय अधिसूचना सं. का.आ. 1084 तारीख 23 मार्च, 1992, द्वारा पेट्रोलियम के परिवहन के लिए पाइपलाइन बिछाने के प्रयोजनार्थ उक्त अधिसूचना से उपाबद्ध भूसूची में विनिर्दिष्ट भूमि में उपयोग के अधिकारों के भर्जन के अपने आशय की घोषणा की थी;

राजपत्रित अधिसूचना की प्रतियां जनता की तारीख 3 जून, 1992 उपलब्ध करा दी गई थी;

उक्त अधिनियम की धारा 6 की उपधारा (1) के अनुसरण में सक्षम प्राधिकारी ने केन्द्रीय सरकार को रिपोर्ट दे दी है;

केन्द्रीय सरकार का उक्त रिपोर्ट पर विचार करने के पश्चात् यह समाधान हो गया है कि इस अधिसूचना से उपाबद्ध भूसूची में विनिर्दिष्ट भूमि में उपयोग के अधिकार का भर्जन किया जाए;

अतः, केन्द्रीय सरकार, उक्त अधिनियम की धारा 6 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए इस अधिसूचना से उपाबद्ध भूसूची में विनिर्दिष्ट भूमि में उपयोग के अधिकार अजित करने की घोषणा करती है;

यह और कि केन्द्रीय सरकार उक्त धारा की उपधारा (4) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए यह निर्देश देती है कि उक्त भूमियों के उपयोग का अधिकार केन्द्रीय सरकार में निहित होने के बजाए सभी विभागों में रहित इंडियन ऑयल कॉर्पोरेशन लिमिटेड में निहित होगा।

भूसूची

तहसील : संमाला जिला : पटियाला राज्य पंजाब

गांव का नाम हवेली स्थान नं./ क्षेत्रफल
नं. कितानं.
हैक्टर मी० वर्ग मी०

1 2 3 4 5 6

बेवना 184 31
13 07 84
14 05 31
17 12 65
24 05 82
25 10 62

सिओना 187 1
22 05 06
23 13 41
24 05 06
6/4 12 14
69/11 00 51
12 12 90
13 02 73

बहुमन माजरा
खेड़ी ताड़िया

1 29 13/22 00 51
128 58

8 05 06
63
8 01 26
12 00 51
13 09 11
17 07 08
18 09 36

कपलपुर

126 120 13/2 05 82
15/1 03 80

सुअरान

110 30 5/1 01 26
31/1 01 52

कम्बो माजरा

45 345/48/1 03 79
437/48/2 18 97
351/49/2 15 18
151 07 59
153/1 16 44
153/2 01 53
154 07 59
155/1 05 06

उरत

07 2099/1 02 02
2102 11 98

उबवाल

06 150 1 13 66
126 18/2-3 1 12
21 01 77
22/1 06 52
23/2 08 60
23 02 78
138 1 13 15
2 00 25
139 5 07 08
6 08 35
7 10 62
11 04 05
12 05 82

1	2	3	4	5	6
उद्घोषण (समाप्त)		139/13	---	14	16
		14	---	04	55
		18	---	01	01
		19	---	04	81
		20	---	08	35
		140			
		15	---	01	01
		16	---	11	38
		17/1	---	11	38
		18	---	12	40
मन्दिर खर्च	81	45			
		18/1	---	04	55
		22/1	---	11	13
		23/1	---	00	51
		23/2	---	07	84
साहोके	82	12	5		
		11/1	---	02	78
		11/2	---	06	07
		11/3	---	00	00
		20	---	03	54
		13			
		15	---	02	02
		16	---	01	77
योगोशल	4	306			
		3	---	12	90
तहसील : फुल	जिला : मरिया	राज्य : पंजाब			
450	231				
	5			12	65

[संख्या : आर-31015/26/93-ओ आर]

फूल दाप निह, अत्रर सधिव

MINISTRY OF PETROLEUM AND NATURAL GAS

New Delhi, the 5th January, 1993

S.O. 214.—Whereas by the notification of the Government of India in the Ministry of Petroleum and Natural Gas No. S.O. 1084, dated the 23rd March, 1992, published in the Gazette of India, Part II, Section 3, Sub-section (ii), dated the 18th April, 1992, issued under sub-section (1) of section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962) (hereinafter referred to as the said Act), the Central Government declared its intention to acquire the right of user in the lands specified in the Schedule appended to that notification for the purpose of laying pipeline for the transport of petroleum;

And whereas the copies of the said Gazette notification were made available to the public on the 3rd June, 1992;

And whereas the Competent Authority in pursuance of sub-section (1) of section 6 of the said Act has made his report to the Central Government ;

And whereas the Central Government after considering the said report is satisfied that the right of user in the lands specified in the Schedule appended to this notification should be acquired;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 6 of the said Act, the Central Government hereby declares that the right of user in the lands specified in the Schedule appended to this notification are hereby acquired:

And further In exercise of the powers conferred by sub-section (4) of the said section, the Central Government hereby directs that the right of user in the said lands shall instead of vesting in the Central Government, vest, free from all encumbrances, in the Indian Oil Corporation Limited.

SCHEDULE

Tehsil : Samana	Distt. : Patiala	State : Punjab			
Name of Village	Had- bast No.	Survey No./ Khasra No./ Mustateel No./ Killa No.	Area		
			Hec- tare	Are	Cen- tiare
1	2	3	4	5	6
Dedana	184	31			
		13		07	84
		14		05	31
		17		12	65
		24		05	82
		25		10	68
Seona	187	1			
		22		05	06
		23		13	41
		24		05	06
		6			
		4		12	14
		69			
		11		00	51
		12		12	90
		13		02	78
		17/1		00	76
		18		12	64
		24		10	62
		74			
		1		09	36
		9	12	12	39
		10		06	07
		12		03	04
		13		11	63
		17		05	82
		18		06	83
		75/5		08	35
Bhraman Majra	129	14/22		00	51
Kheri Naghia	128	58			
		8		05	06
		63			
		8		01	26
		12		00	51
		13		09	11
		17		07	08
		18		09	36

Tehsil : Sunam	Distt. : Sangrur	State : Punjab	1	2	3	4	5	6
1	2	3	4	5	6			
Kamalpur	126	120				11/2	—	06 07
		14/2	—	05	82	11/3	—	00 00
		15/1	—	04	80	20	—	03 54
						13		
						15	—	02 02
						16	—	01 77
Gujjran	110	30				Longowal	04	306
		5/2	—	01	26		8	—
		31/1	—	01	52			12 90
Kambo Majra	45	345/84/1	—	03	79	Chowke	450	231
		347/48/2	—	18	97			
		351/49/2	—	15	18		5	—
		151	—	07	59			12 65
		153/1	—	16	44			
		153/2	—	02	53			
		154	—	07	59			
		155/1	—	05	06			
Upli	07	2099/1	—	02	02			
		2102	—	11	89			
Ubewal	06	130						
		1	—	13	66			
		126						
		18/2-3	—	12	40			
		21	—	01	77			
		22/1	—	06	32			
		22/2	—	08	60			
		23	—	02	78			
		138						
		1	—	13	15			
		2	—	00	25			
		139						
		5	—	07	08			
		6	—	08	35			
		7	—	10	62			
		11	—	04	05			
		12	—	05	82			
		139						
		13	—	14	16			
		14	—	04	55			
		18	—	01	01			
		19	—	04	81			
		20	—	08	35			
		140						
		15	—	01	01			
		16	—	11	38			
		17/1	—	11	38			
		18	—	12	40			
Mander Khurd	81	45						
		18/1	—	04	55			
		22/1	—	11	13			
		23/1	—	00	51			
		23/2	—	07	84			
Sahoke	82	12						
		11/1	—	02	78			

[No. R-31015/26/92-OR-I]

KULDIP SINGH, Under Secy.

नई दिल्ली, 5 जनवरी, 1993

का.भा. 213—केन्द्रीय सरकार ने, पेट्रोलियम और खनिज पदार्थों का (भूमि में उपयोग के अधिकार का भर्जन) अधिनियम, 1962 (1962 का 50) (जिसे इसमें इसके पश्चात उक्त अधिनियम] कहा गया है) की धारा 6 की उपधारा (1) के अधीन जारी की गई भारत सरकार के पेट्रोलियम और प्राकृतिक गैस मंत्रालय की अधिसूचना संख्या का.भा. 204, 205, 208 एवं 209, तारीख 18 जनवरी, 1992, द्वारा जो भारत के राजपत्र, भाग 2, खंड 3, उपखंड (ii) के पृष्ठ क्रमशः 337 से 345, 353 से 357, 378 से 380 एवं 383 से 387 पर प्रकाशित हुई थी, यह घोषणा की थी की पेट्रोलियम के परिवहन के लिए पाइपलाइन बिछाने के प्रयोजन के लिए उक्त अधिसूचना में संलग्न अनुसूची में विनिर्दिष्ट में उपयोग के अधिकार का भर्जन किया जाना चाहिए ;

और केन्द्रीय सरकार के ध्यान में यह लाया गया है कि राजपत्र में उक्त अधिसूचना के प्रकाशन में टंकण और मुद्रण प्रकृति की कतिपय गलतियाँ हुई हैं ;

अतः, अब, केन्द्रीय सरकार, उक्त अधिनियम की धारा 6 की उपधारा 1 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, उक्त अधिसूचना से संलग्न अनुसूची का निम्न प्रकार से संशोधन करती है।

पृष्ठ संख्या 337 : मागगा गांव के स्तम्भ 3 के नीचे, किला संख्या "2880" एवं "2800/1/1" के स्थान पर क्रमशः "2780" एवं "2801/1" पढ़ें।

पणपरपुर गांव के स्तम्भ 3 के नीचे, किला संख्या "211/2/2/1" के स्थान पर "211/2/2/1" पढ़ें।

पृष्ठ संख्या 388 : खेरी गांव के स्तम्भ 3 के नीचे "20/07" के स्थान पर "20/04" पढ़ें।

बीर भसवान गांव के स्तम्भ 3 के नीचे, किला संख्या "8/18" के स्थान पर "8/17" पढ़ें।

स्तम्भ 5 के नीचे किला संख्या 16/18, 16/22, एवं 16/23 के नीचे, "02", "22" एवं "23" के स्थान पर क्रमशः "01", "0" एवं "13" पढ़ें।

पृष्ठ संख्या 341 : उबेवाल गांव के स्तम्भ 3 के नीचे, किला संख्या "158/02" के स्थान पर "158/1" पढ़ें।

किला भारियात गांव के स्तम्भ 2 के नीचे, हदबस्त संख्या "6" के स्थान पर "5" पढ़ें।

स्तम्भ 4 के नीचे, किला संख्या "54/15" एवं "60/02" के सामने, "9" एवं "5" के स्थान पर "0" एवं "0" पढ़ें।

New Delhi, the 5th January, 1993

पृष्ठ संख्या 354: ताऊ के गांव के स्तम्भ 6 के नीचे, किला संख्या 23/5/1 के सामने, "5" के स्थान पर "85" पढ़ें।

पृष्ठ संख्या 355: ठठे गांव के स्तम्भ 6 के नीचे, किला संख्या 87/5/2 के सामने, "24" के स्थान पर "84" पढ़ें।

पृष्ठ संख्या 356: खालियावाली गांव के स्तम्भ 5 के नीचे, किला संख्या 116/07 के सामने, "16" के स्थान पर "15" पढ़ें।

पृष्ठ संख्या 357: गिलखर्दे गांव के स्तम्भ 6 के नीचे, किला संख्या 65/08 के सामने, "72" के स्थान पर "76" पढ़ें।

खंडूके गांव के स्तम्भ 5 के नीचे, किला संख्या 94/1 के सामने, "05/1" के स्थान पर "5" पढ़ें।

पृष्ठ संख्या 379: श्रवणिया गांव के स्तम्भ 5 के नीचे, किला संख्या 89/25/1 के सामने, "3" के स्थान पर "8" पढ़ें।

स्तम्भ 3 के नीचे, किला संख्या "70/181" एवं "70/182" के स्थान पर क्रमशः "70/18/1" एवं "70/18/2" पढ़ें।

स्तम्भ 6 के नीचे, किला संख्या 70/12 के सामने, "67" के स्थान पर "88" पढ़ें।

पृष्ठ संख्या 380: श्रवणिया गांव के स्तम्भ 3 के नीचे एवं किला संख्या 1175 के ऊपर, "1458" के स्थान पर "1459" पढ़ें।

पृष्ठ संख्या 381: मेहता गांव के स्तम्भ 2 के नीचे, हदबस्त संख्या "331" के स्थान पर "131" पढ़ें।

स्तम्भ 3 के नीचे, किला संख्या "37/10" के स्थान पर "37/10/1" पढ़ें।

स्तम्भ 6 के नीचे, किला संख्या "37/11/1" के सामने, "1" के स्थान पर "10" पढ़ें।

पृष्ठ संख्या 384: सेहवाल गांव के स्तम्भ 6 के नीचे, किला संख्या 37/15 के सामने, "17" के स्थान पर "28" पढ़ें।

स्तम्भ 5 एवं 6 के नीचे, किला संख्या 38 के सामने से क्रमशः "2" एवं "28" को निकाल दें।

स्तम्भ 5 एवं 6 के नीचे, किला संख्या 38/3/2 के सामने, संख्या "2" एवं "28" निरेश करें।

मफिकुर खूर्द गांव के स्तम्भ 3 के नीचे, किला संख्या "35/5/2" के स्थान पर "35/5/2/1" पढ़ें।

समूरात गांव के स्तम्भ 6 के नीचे, किला संख्या "6/11" के सामने, "65" के स्थान पर "85" पढ़ें।

स्तम्भ 3 के नीचे, किला संख्या "17/2" के स्थान पर "17/12" पढ़ें।

पृष्ठ संख्या 385: गुजरा गांव के स्तम्भ 5 के नीचे, किला संख्या 17/10/3 के सामने, "4" के स्थान पर "3" पढ़ें।

पृष्ठ संख्या 386: गोबिन्दपुर नागरी गांव के स्तम्भ 5 के नीचे किला संख्या "14/1" के सामने, "66" के स्थान पर "8" पढ़ें।

स्तम्भ 3 के नीचे, किला संख्या "47/5", "58/10" एवं "14/3" के स्थान पर क्रमशः "47/6", "58/10/1" एवं "14/1" पढ़ें।

मेहता गांव के स्तम्भ 5 के नीचे, किला संख्या 9/1 के सामने, "2" के स्थान पर "7" पढ़ें।

पृष्ठ संख्या 387: मेहता गांव के स्तम्भ 6 के नीचे, किला संख्या 57/2 के सामने, "8" के स्थान पर "81" पढ़ें।

यह और कि केन्द्रीय सरकार, उक्त अधिनियम की धारा 6 की उपधारा 4 द्वारा प्रदत्त शक्तियों का प्रयोग करने हुए, यह निदेश देती है कि उक्त भूमि के उपयोग का अधिकार केन्द्रीय सरकार में निहित होने के बावजूद, सभी विलयनों में मृत होकर, इंडियन ऑयल कारपोरेशन लिमिटेड में निहित होगा।

[सं. आर-31015/18/90-ओ आर I]

कुलदीप सिंह, शस्त्र सचिव

1993/G1/93-20

S.O. 215.—Whereas by the notification if the Government of India in the Ministry of Petroleum and Natural Gas No. S.O. 204, 205 and 209 dated the 18th January, 1992, published in the Gazette of India, Part II, Section 3, Sub-section (ii), at pages 346 to 353, 357 to 361 and 387 to 391 respectively, issued under sub-section (1) of section 6 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962) (hereinafter referred to as the said Act), the Central Government declared that the right of user in the lands specified in the Schedule, appended to those notifications for the purpose of laying pipelines for transport of petroleum, should be acquired;

And whereas, it has been brought to the notice of the Central Government that certain errors of printing nature have occurred in the publication of the said notifications in the Gazette;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 6 of the said Act, the Central Government hereby amends the Schedule appended to the aforesaid notifications as follows :

at page 347, in village Kambo Majra Kalan, against killa no. 174, in column 5, for '06' read '05' and in column 6, for '32' read '06', against killa no. 179/2, in column 5, for '05' read '06', in column 6, for '06' read '32', in column 1, against killa no. 1, above the name of the village Upli, insert name of village 'Kanoi', in column 2, against so amended village Kanoi, insert hadbast No. '46';

at page 348, in village Ubewai, against killa no. 129/1, in column 5, for '1' read '10';

at page 350, in village Longawal, against killa no. 260/19/1, in column 6, insert '60';

at page 358, in village Chouke, against killa no. 215/22, in column 6, for '22' read '12';

at page 387, in village Schai, in column 3, for killa no. '8/40' read '8/4';

at page 389, in village Khanal Kalan, in column 3, for killa no. '156/10' read '150/10', in village Gujran, in column 3, for '2' read '3';

at page 390, in village Gujran, against killa no. 31/12, in column 5, insert are '11'; in village Gobindpur Nagri, against killa no. 30/21, in column 5, for '13' read '3';

And further, in exercise of the powers conferred by sub-section (4) of section 6 of the aforesaid Act, the Central Government hereby directs that the right of user in the said lands shall instead of vesting in the Central Government, vest free from all encumbrance in the Indian Oil Corporation Limited.

[No. R-31015/18/92-ORI]

KULDIP SINGH, Under Secy.

नई दिल्ली, 5 जनवरी, 1993

का.प्रा. 215—केन्द्रीय सरकार ने, पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) जिसे हमें इसके पश्चात उक्त अधिनियम कहा गया है की धारा 6 की उपधारा (1) के अधीन जारी की गई भारत सरकार के पेट्रोलियम और प्राकृतिक गैस मंत्रालय की अधिसूचनाएं संख्या का.प्रा. 479, 480 एवं 481 तारीख 8 फरवरी 1992, द्वारा जो भारत के राजपत्र, भाग 2, खंड 3, उपखण्ड (ii) के पृष्ठ 753 से 756, 759 से 764 एवं 767 से 773 पर प्रकाशित हुई थीं, यह घोषणा की थी पेट्रोलियम के परिवहन के लिए पाइपलाइन बिछाने के प्रयोजन के लिए उक्त अधिसूचना संवत्त धान्मचो में विनिर्दिष्ट में उपयोग के अधिकार का अर्जन किया जाना चाहिए।

और केन्द्रीय सरकार के ध्यान में यह लाया गया है कि राजपत्र में उक्त अधिसूचना के प्रकाशन में त्रुटि और भ्रष्टाचार प्रवृत्ति का वर्णन गलतियाँ हुई हैं।

अतः, अब, केन्द्रीय सरकार, उक्त अधिनियम की धारा 6 की उप-धारा 1 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, उक्त अधिसूचना में संलग्न अनुसूची का निम्न प्रकार से संशोधन करती है :

- पृष्ठ संख्या 753 : अफकल कला गांव के स्लब 3 के नीचे, किला संख्या "109/13" के स्थान पर "109/22" पढ़ें।
यथा संशोधित किला संख्या 109/13 के सामने, स्लब 6 के नीचे "39" के स्थान पर "40" पढ़ें।
- पृष्ठ संख्या 754 : अफकल कला गांव के स्लब 3 के नीचे किला संख्या "3/1" के स्थान पर "3/1" पढ़ें।
- पृष्ठ संख्या 755 : कोटहना गांव के स्लब 6 के नीचे, किला संख्या 53/17 के सामने, "63" के स्थान पर "31" पढ़ें।
स्लब 5 के नीचे, किला संख्या 53/12 के सामने, "01" के स्थान पर "07" पढ़ें।
स्लब 3 के नीचे, किला संख्या 55/33 के स्थान पर 55/14 पढ़ें।
- पृष्ठ संख्या 756 : पखों कला गांव के स्लब 5 के नीचे, किला संख्या 341/13 के सामने, "13" के स्थान पर "13" पढ़ें।
स्लब 4 के नीचे किला संख्या 358/1 के सामने "13" के स्थान पर "1—4" पढ़ें।
- पृष्ठ संख्या 760 : स्लब 1 के नीचे, किला संख्या 135 के सामने, गांव का नाम "धक फतह सिंह वाला" लिखें।
यथा संशोधित धक फतह सिंह वाला गांव के स्लब 2 के नीचे, हदबस्त संख्या "405" लिखें।
- पृष्ठ संख्या 763 : गुलाब गढ़ उर्फ साईवाला गांव के स्लब 5 के नीचे, किला संख्या 18/7/2 के सामने, "32" के स्थान पर "11" पढ़ें।
स्लब 5 के नीचे किला संख्या 18/13/2 के सामने, "03" के स्थान पर "03" पढ़ें।
- पृष्ठ संख्या 769 : उगोहे गांव के स्लब 6 के नीचे, किला संख्या 32/06 के सामने "15" के स्थान पर "16" पढ़ें।
स्लब 3 के नीचे, किला संख्या 50/70 के स्थान पर "50/7" पढ़ें।
- पृष्ठ संख्या 771 : देवता गांव के स्लब 3 के नीचे किला संख्या "71/21/3" के स्थान पर "71/21/2" पढ़ें।

यह और कि केन्द्रीय सरकार, उक्त अधिनियम की धारा 6 की उपधारा 4 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह निदेश देती है कि उक्त भूमि के उपयोग का अधिकार केन्द्रीय सरकार से निहित होने के बजाय सभी चिल्लागाँवों से मुक्त होकर, इंडियन आयल कारपोरेशन लिमिटेड में निहित होगा।

[नं. आर-31015/18/92-ऑ आर-1]

कुलदीप सिंह, अवर सचिव

New Delhi, the 5th January, 1993

S.O. 216.—Whereas by the notification of the Government of India in the Ministry of Petroleum and Natural Gas No. S.O. 479 and 480 dated the 8th February, 1992, published in the Gazette of India, Part II, Section 3, Sub-section (ii) at pages 756 to 759 and 764 to 767 respectively, issued under sub-section (1) of section 6 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962) (hereinafter referred to as the said Act), the Central Government declared that the right of user in the lands specified in the Schedule appended to that notification for the purpose of laying pipelines for transport of petroleum, should be acquired;

And whereas, it has been brought to the notice of the Central Government that certain errors of printing nature have occurred in the publication of the said notification in the Gazette;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 6 of the said Act, the Central Government hereby amends the Schedule appended to the said notification as follows :

at page 757, in village Aspal Kalan, against killa No. 122/16/1, in column 6, for '48' read '84' ;

at page 764, in column 1, against hadbast No. 204 and Killa No. 69, insert name of village 'Chak Ram Singh Wala' ;

And further in exercise of the powers conferred by sub-section (4) of section 6 of the aforesaid Act, the Central Government hereby directs that the right of user in the said lands shall instead of vesting in the Central Government, vest free from all encumbrance in the Indian Oil Corporation Limited.

[No. R-31015/18/92-OR-I]

KULDIP SINGH, Under Secy.

नई दिल्ली, 12 जनवरी, 1993

का आ. 217.—केन्द्रीय सरकार को यह प्रतीत होता है कि लोकहित में आवश्यक है कि गुजरात राज्य में कांडला से पंजाब राज्य में भटिंडा तक राजस्थान और हरियाणा से होकर पैट्रोलियम के परिवहन के लिए इंडियन आयल कारपोरेशन लिमिटेड द्वारा पाइपलाइन बिछाई जाए ;

और ऐसा प्रतीत होता है कि उक्त पाइपलाइन बिछाने के प्रयोजनों के लिए इस अधिसूचना से उपायक अनुसूची में वर्णित भूमि के उपयोग के अधिकार का अर्जन करना आवश्यक है :

अतः, केन्द्रीय सरकार, पैट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) की धारा 3 की उपधारा '(1)' द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, उनमें उपयोग के अधिकार का अर्जन करने के अपने धाम्य को घोषणा करती है ;

उक्त अनुसूची में वर्णित भूमि में हिसबद कोई व्यक्ति, राजपत्र में यथा प्रकाशित इस अधिसूचना की प्रतियां साधारण जनता को उपलब्ध कर दिए जाने की तारीख से 21 दिन के भीतर, उनमें उपयोग के अधिकार का अर्जन या भूमि में पाइपलाइन बिछाने के सम्बन्ध में आपत्ति निहित रूप में या हनुमान सहाय वागड़ा, संपर्क अधिकारी योगेश्वर प्राधिकार, इंडियन आयल कारपोरेशन लिमिटेड, कांडला "सी" भटिंडा पाइपलाइन परियोजना डी-45/बी, मुसाफ मार्ग जयपुर-302001 को कर सकेगा।

अनुसूची				
तहसील : फागी		जिला : जयपुर	राज्य : राजस्थान	
क्षेत्रफल				
गांव का नाम	खसरा नं.	हेक्टेयर	आर	वर्गमीटर
1	2	3	4	5
निमेड़ा	1165	0	00	63
	1364	0	01	14
	1369	0	00	68

[संख्या : आर-31015/24/92-ओ-आर I]

कुलदीप सिंह, अवर सचिव

New Delhi, the 12th January, 1993

S.O. 217.—Whereas it appears to the Central Government that it is necessary in the public interest that for the transport of Petroleum from Kandla in the State of Gujarat to Bhatinda in the State of Punjab, via Rajasthan and Haryana, pipelines should be laid by the Indian Oil Corporation Limited;

And whereas it appears that for the purpose of laying such pipelines it is necessary to acquire the right of user in the land described in the Schedule annexed to this notification;

Now, therefore, in exercise of the powers conferred by sub-section (i) of section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Central Government hereby declares its intention to acquire the right of user therein;

Any person interested in the land described in the said Schedule may within 21 days from the date on which the copies of this notification, as published in the Gazette of India, are made available to the general public object in writing to the acquisition of the right of user therein or laying of the pipeline under the land to Shri H. S. BAGERA, Liaison Officer and Competent Authority, Indian Oil Corporation Limited, Kandla-Bhatinda Pipeline Project, D-45/B, SUBHASH MARG, 'C' SCHEME JAIPUR-302001.

SCHEDULE

Tehsil : Phagi	Dist : Jaipur	State : Rajasthan		
Name of Village	Khasra No.	Area		
		Hec- tare	Are	Centi- are
1	2	3	4	5
Nimera	1363	0	00	68
	1364	0	01	14
	1369	0	00	68

[No-R-31015/24/92-OR-II]
KULDIP SINGH, Under Secy.

नई दिल्ली, 12 जनवरी, 1993

का.प्र. 218.—केन्द्रीय सरकार को यह प्रतीत होता है कि लोक-हित में आवश्यक है कि गुजरात राज्य से कांठला से पंजाब राज्य में भटिंडा तक राजस्थान और हरियाणा से होकर पेट्रोलियम के परिवहन

के लिए इंडियन आयल कारपोरेशन लिमिटेड द्वारा पाइपलाइन बिछाई जाए ;

और ऐसा प्रतीत होता है कि उक्त पाइपलाइन बिछाने के प्रयोजनों के लिए इस अधिसूचना उपबद्ध अनुसूची में वर्णित भूमि के उपयोग के अधिपन का अर्जन करना आवश्यक है ;

अतः, केन्द्रीय सरकार, पेट्रोलियम और खनिज पाइपलाइन भूमि में उपयोग के अधिकार का अर्जन : अधिनियम, 1962 (1962 का 50) का धारा 3 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, उनमें उपयोग के अधिकार का अर्जन करने के अपने आशय की घोषणा करते हैं ;

उक्त अनुसूची में वर्णित भूमि में शिवाब कोई व्यक्ति, राजपत्र में प्रकाशित इस अधिसूचना की प्रतियां साधारण जनता को उपलब्ध करा दिए जाने की तारीख से 21 दिन के भीतर, उनमें उपयोग के अधिकार का अर्जन या भूमि में पाइपलाइन बिछाने के सम्बन्ध में आपत्ति लिखित रूप में श्री हनुमान सहस्र बागड़ा, संपर्क अधिकारी और रक्षक प्राधिकारी, इंडियन आयल कारपोरेशन लिमिटेड, कांठला-भटिंडा पाइपलाइन परियोजना, डी-45/ब, सुभाष मार्ग "सी" स्कीम जयपुर-302001 को कर सकेगा।

अनुसूची

तहसील : किशनगढ़	जिला : अजमेर	राज्य : राजस्थान		
क्षेत्रफल				
गांव का नाम	खसरा नं.	हेक्टेयर	आर	वर्गमीटर
1	2	3	4	5
ढक्क	144/2	0	01	30
	145	0	00	08
	146	0	00	60
	149	0	00	52

[संख्या आर-31015/24/92-ओ. 2आर. I]

कुलदीप सिंह, अवर सचिव

New Delhi, the 12th January, 1993

S.O. 218.—Whereas it appears to the Central Government that it is necessary in the public interest that for the transport of Petroleum from Kandla in the State of Gujarat to Bhatinda in the State of Punjab, via Rajasthan and Haryana, pipelines should be laid by the Indian Oil Corporation Limited;

And whereas it appears that for the purpose of laying such pipelines it is necessary to acquire the right of user in the land described in the Schedule annexed to this notification;

Now, therefore, in exercise of the powers conferred by sub-section (i) of section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Central Government hereby declares its intention to acquire the right of user therein;

Any person interested in the land described in the said Schedule may within 21 days from the date on which the copies of this notification, as published in the Gazette of India, are made available to the general public object in writing to the acquisition of the right of user therein or laying of the pipeline under the land to Shri H. S. BAGERA, Liaison Officer and Competent Authority, Indian Oil Corporation Limited, Kandla-Bhatinda Pipeline Project, D-45/B, SUBHASH MARG, 'C' SCHEME JAIPUR-302001.

SCHEDULE

New Delhi, the 12th January, 1993

Tehsil : Kishangarh District : Ajmer State : Rajasthan				
Name of Village	Khasra No.	Area		
		Hec-tare	Are	Centiare
1	2	3	4	5
Dhasuk	144/2	0	01	30
	145	0	00	08
	146	0	00	60
	149	0	00	52

[No. R-31015/24/92-O.R-I]

KULDIP SINGH, Under Secy.

नई दिल्ली, 12 जनवरी, 1993

का. घा. 219.—केन्द्रीय सरकार को यह प्रतीत होता है कि लोकहित में आवश्यक है कि गुजरात राज्य में कांठला से पंजाब राज्य में भटिंडा तक राजस्थान और हरियाणा से होकर पेट्रोलियम के परिवहन के लिए इंडियन आयल कारपोरेशन लिमिटेड द्वारा पाइपलाइन बिछाई जाए ;

और ऐसा प्रतीत होता है कि उक्त पाइपलाइन बिछाने के प्रयोजनों के लिए इस अधिसूचना से उपाय अनुसूची में वर्णित भूमि के उपयोग के अधिकार का अर्जन करना आवश्यक है ,

अतः केन्द्रीय सरकार, पेट्रोलियम और खनिज पाइपलाइन : भूमि में उपयोग के अधिकार का अर्जन अधिनियम, 1962 का (50 1962) की धारा 3 की 3 धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उनमें उपयोग के अधिकार का अर्जन करने के अपने आशय की घोषणा करती है ,

उक्त अनुसूची में वर्णित भूमि में हितबद्ध कोई व्यक्ति, राजपत्र में यथा प्रकाशित इस अधिसूचना की प्रतियां साधारण जनता को उपलब्ध करा दिए जाने की तारीख से 21 दिन के भीतर, उनमें उपयोग के अधिकार का अर्जन या भूमि में पाइपलाइन बिछाने के सम्बन्ध में आपत्ति लिखित रूप में श्री हनुमान सहाय बागड़ा, संपर्क अधिकारी और सक्षम प्राधिकारी इंडियन आयल कारपोरेशन लिमिटेड कोठला-भटिंडा पाइपलाइन परियोजना डी-45/बी सुभाष मार्ग "सी" स्कीम जयपुर-342 001 को कर सकेगा।

अनुसूची

तहसील : नसीराबाद जिला : अजमेर राज्य : राजस्थान				
क्षेत्रफल				
गांव का नाम	खसरा नं.	हेक्टेयर	आर	वर्गमीटर
1	2	3	4	5
बाघसुरी	415	0	00	93
	497	0	00	14
	498	0	00	08
	501	0	00	22
	502/1	0	01	13

[संख्या : घार-31015/24/92 ओ घार I]

कुलदीप सिंह, अधर सचिव

S.O. 219.—Whereas it appears to the Central Government that it is necessary in the public interest that for the transport of Petroleum from Kandla in the State of Gujarat to Bhatinda in the State of Punjab, via Rajasthan and Haryana, pipelines should be laid by the Indian Oil Corporation Limited;

And whereas it appears that for the purpose of laying such pipelines it is necessary to acquire the right of user in the land described in the Schedule annexed to this notification;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Central Government hereby declares its intention to acquire the right of user therein;

Any person interested in the land described in the said Schedule may within 21 days from the date on which the copies of this notification, as published in the Gazette of India, are made available to the general public object in writing to the acquisition of the right of user therein or laying of the pipeline under the land to Shri H. S. BAGERA, Liaison Officer and Competent Authority, Indian Oil Corporation Limited, Kandla-Bhatinda Pipeline Project, D-45/B, SUBHASH MARG, 'C' SCHEME JAIPUR-302001.

SCHEDULE

Tehsil : Nasirabad District : Amre State : Rajasthan				
Name of Village	Khasra No.	Area		
		Hec-tare	Are	Centiare
1	2	3	4	5
Bghusuri	415	0	00	93
	497	0	00	14
	498	0	00	08
	501	0	00	22
	502/1	0	01	13

[No. R-31015/24/92-O.R-I]

KULDIP SINGH, Under Secy

नई दिल्ली, 12 जनवरी, 1993

का. घा. 220.—केन्द्रीय सरकार को यह प्रतीत होता है कि लोकहित में आवश्यक है कि गुजरात राज्य में कांठला से पंजाब राज्य में भटिंडा तक राजस्थान और हरियाणा से होकर पेट्रोलियम के परिवहन के लिए इंडियन आयल कारपोरेशन लिमिटेड द्वारा पाइपलाइन बिछाई जाए ;

और ऐसा प्रतीत होता है कि उक्त पाइपलाइन बिछाने के प्रयोजनों के लिए इस अधिसूचना से उपाय अनुसूची में वर्णित भूमि के उपयोग के अधिकार का अर्जन करना आवश्यक है ,

अतः केन्द्रीय सरकार, पेट्रोलियम और खनिज पाइपलाइन : भूमि में उपयोग के अधिकार का अर्जन : अधिनियम, 1962 (1962 का 50) की धारा 3 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उनमें उपयोग के अधिकार का अर्जन करने के अपने आशय की घोषणा करती है ;

उक्त अनुसूची में वर्णित भूमि हितबद्ध कोई व्यक्ति, राजपत्र में यथाप्रकाशित इस अधिसूचना की प्रतियां साधारण जनता को उपलब्ध करा दिए जाने की तारीख से 21 दिन के भीतर, उनमें उपयोग के अधिकार का अर्जन या भूमि में पाइपलाइन बिछाने के सम्बन्ध में आपत्ति लिखित रूप में श्री हनुमान सहाय बागड़ा, अधिकारी और

सक्षम प्राधिकारी, इंडियन आयल कॉर्पोरेशन लिमिटेड, कांडला-भटिन्डा पाइपलाइन परियोजना, डी-45/बी, सुभाष मार्ग "सी" स्कीम जयपुर-302 001 को कर सकेगा।

अनुसूची

क्षेत्रफल				
गांव का नाम	खसरा नं.	हेक्टेयर अथवा	वर्गमीटर	
1	2	3	4	5
दीपाबाग	137	0	00	93
	229	0	00	52
	237	0	00	46
	240	0	00	26
	242	0	00	33

[संख्या : आर-31015/24/92-ओ. आर-1]
कुलदीप सिंह, अवर सचिव

Now Delhi, the 12th January, 1993

S.O. 220.—Whereas it appears to the Central Government that it is necessary in the public interest that for the transport of Petroleum from Kandla in the State of Gujarat to Bhatinda in the State of Punjab, via Rajasthan and Haryana, pipelines should be laid by the Indian Oil Corporation Limited;

And whereas it appears that for the purpose of laying such pipelines it is necessary to acquire the right of user in the land described in the Schedule annexed to this notification;

Now, therefore, in exercise of the powers conferred by sub-section (i) of section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Central Government hereby declares its intention to acquire the right of user therein;

Any person interested in the land described in the said Schedule may within 21 days from the date on which the copies of this notification, as published in the Gazette of India, are made available to the general public object in writing to the acquisition of the right of user therein or laying of the pipeline under the land to Shri H. S. BAGERA, Liaison Officer and Competent Authority, Indian Oil Corporation Limited, Kandla-Bhatinda Pipeline Project, D-45/B, SUBHASH MARG, 'C' SCHEME JAIPUR-302001.

SCHEDULE

Area				
Name of Village	Khasra No.	Hec-tare	Arc Centiare	
1	2	3	4	5
Deepawas	137	0	00	93
	229	0	00	52
	237	0	00	46
	240	0	00	26
	242	0	00	33

[No. R-31015/24/92—O.R.]

KULDIP SINGH, Under Secy.

नई दिल्ली, 12 जनवरी, 1993

का. आ. 221.—केन्द्रीय सरकार को यह प्रतीत होता है कि लोकहित में आवश्यक है कि गुजरात राज्य में कांडला से पंजाब राज्य में भटिन्डा तक राजस्थान और हरियाणा से होकर पेट्रोलियम के परिवहन के लिए इंडियन आयल कॉर्पोरेशन लिमिटेड द्वारा पाइपलाइन बिछाई जाए;

और ऐसा प्रतीत होता है कि उक्त पाइपलाइन बिछाने के उद्देश्य के लिए इस अधिसूचना से उपाखंड अनुसूची में वर्णित भूमि के उपयोग के अधिकार का अर्जन करना आवश्यक है;

अतः केन्द्रीय सरकार पेट्रोलियम और खनिज पाइपलाइन भूमि में उपयोग के अधिकार का अर्जन : अधिनियम, 1962 (1962 का 50) की धारा 3 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करती हुए उनमें उपयोग के अधिकार का अर्जन करने के अने आग्रह को पौराण्य करती है;

उक्त अनुसूची में वर्णित भूमि में हितबद्ध कोई व्यक्ति राजपत्र में गद्याप्रकाशित इस अधिसूचना की प्रतियां साधारण कृतता को उपलब्ध कर / दिए जाने की तारीख से 21 दिन के भीतर उनमें उपयोग के अधिकार का अर्जन या भूमि में पाइपलाइन बिछाने के सम्बन्ध में आपत्ति लिखित रूप में श्री हनुमान सहाय बागड़ा सीक्रेटरी और सक्षम प्राधिकारी इंडियन आयल कॉर्पोरेशन, लिमिटेड कांडला—भटिन्डा पाइपलाइन परियोजना डी-45/बी सुभाष मार्ग "सी" स्कीम जयपुर-302 001 को कर सकेगा।

अनुसूची

क्षेत्रफल				
गांव का नाम	खसरा नं.	हेक्टेयर अथवा	वर्गमीटर	
1	2	3	4	5
राजोला खुर्द	331	0	00	16
	348	0	01	83
	351	0	00	24
	352	0	00	22

[संख्या : आर-31015/24/92--ओ. आर-1]
कुलदीप सिंह, अवर सचिव

Now Delhi, the 12th January, 1993

S.O. 221.—Whereas it appears to the Central Government that it is necessary in the public interest that for the transport of Petroleum from Kandla in the State of Gujarat to Bhatinda in the State of Punjab, via Rajasthan and Haryana, pipelines should be laid by the Indian Oil Corporation Limited;

And whereas it appears that for the purpose of laying such pipelines it is necessary to acquire the right of user in the land described in the Schedule annexed to this notification;

Now, therefore, in exercise of the powers conferred by sub-section (i) of section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Central Government hereby declares its intention to acquire the right of user therein;

Any person interested in the land described in the said Schedule may within 21 days from the date on which the copies of this notification, as published in the Gazette of India, are made available to the general public object in

writing to the acquisition of the right of user therein or laying of the pipeline under the land to Shri H. S. BAGERA, Liaison Officer and Competent Authority, Indian Oil Corporation Limited, Kandla-Bhatinda Pipeline Project, D-45/B, SUBHASH MARG, 'C' SCHEME JAIPUR-302001.

SCHEDULE

Tehsil : Kharchi	District : Pali	State : Rajasthan	Area		
Name of Village	Khasra No.	Hec-tare	Are	Cen-tiare	
1	2	3	4	5	
Rajola Khurd	334	0	00	16	
	348	0	01	88	
	351	0	00	24	
	352	0	00	22	

[No.R - 31015/24/92—ORJ]

KULDIP SINGH, Under Secy.

नई दिल्ली, 12 जनवरी, 1993

का. आ. 222.—केन्द्रीय सरकार को यह प्रतीत होता है कि लोकहित में आवश्यक है कि गुजरात राज्य में कांठला से पंजाब राज्य में भटिंडा तक राजस्थान और हरियाणा से होकर पेट्रोलियम के परिवहन के लिए इंडियन आयल कॉर्पोरेशन लिमिटेड द्वारा पाइपलाइन बिछाई जाए ;

और ऐसा प्रतीत होता है कि उक्त पाइपलाइन बिछाने के प्रयोजनों के लिए इस अधिसूचना में उपाबद्ध अनुसूची में वर्णित भूमि के उपयोग के अधिकार का अर्जन करना आवश्यक है ;

अतः केन्द्रीय सरकार पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) की धारा 3 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उनमें उपयोग के अधिकार का अर्जन करने के अपने प्राण्य को घोषणा करती है :

उक्त अनुसूची में वर्णित भूमि में हितवद्ध कोई व्यक्ति राजपूत में यथाप्रकाशित इस अधिसूचना की प्रतियां माधारण जनता को उपलब्ध करा दिए जाने की तारीख से 21 दिन के भीतर उनमें उपयोग के अधिकार का अर्जन या भूमि में पाइपलाइन बिछाने के सम्बन्ध में आपत्ति लिखित रूप में श्री हनुमान सहाय बागड़ा, संकर्ष अधिकारी और सक्षम प्राधिकारी इंडियन आयल कॉर्पोरेशन लिमिटेड कांठला—भटिंडा पाइपलाइन परियोजना डी-45/बी सुभाष मार्ग "सी" स्कीम जयपुर-302 001 को कर सकेगा।

अनुसूची

तहसील : बेसुरी	जिला : पाली	राज्य : राजस्थान	क्षेत्रफल		
गांव का नाम	खसरा न.	हेक्टेयर	आर.	वर्गमीटर	
1	2	3	4	5	
पिलावनी	862	0	01	80	
धेनड़ी	868	0	01	08	
दोहरी	55	0	00	62	

[संख्या आर-31015/24/92—ओ. आर. 1]

कुलदीप सिंह अवसरसिंह

New Delhi, the 12th January, 1993

S.O. 222.—Whereas it appears to the Central Government that it is necessary in the public interest that for the transport of Petroleum from Kandla in the State of Gujarat to Bhatinda in the State of Punjab, via Rajasthan and Haryana, pipelines should be laid by the Indian Oil Corporation Limited;

And whereas it appears that for the purpose of laying such pipelines it is necessary to acquire the right of user in the land described in the Schedule annexed to this notification;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Central Government hereby declares its intention to acquire the right of user therein;

Any person interested in the land described in the said Schedule may within 21 days from the date on which the copies of this notification, as published in the Gazette of India, are made available to the general public object in writing to the acquisition of the right of user therein or laying of the pipeline under the land to Shri H. S. BAGERA, Liaison Officer and Competent Authority, Indian Oil Corporation Limited, Kandla-Bhatinda Pipeline Project, D-45/B, SUBHASH MARG, 'C' SCHEME JAIPUR-302001.

SCHEDULE

Tehsil : Desuri	District : Pali	State : Rajasthan	Area		
Name of Village	Khasra No.	Hec-tare	Are	Cen-tiare	
1	2	3	4	5	
Pilawani	862	0	01	80	
Ghenri	868	0	00	08	
-do-	55	0	00	62	

[No.R—31015/24/92—O.R.]

KULDIP SINGH, Under Secy.

नई दिल्ली, 12 जनवरी, 1993

का. आ. 223.—केन्द्रीय सरकार को यह प्रतीत होता है कि लोकहित में आवश्यक है कि गुजरात राज्य में कांठला से पंजाब राज्य में भटिंडा तक राजस्थान और हरियाणा से होकर पेट्रोलियम के परिवहन के लिए इंडियन आयल कॉर्पोरेशन द्वारा पाइपलाइन बिछाई जाए ;

और ऐसा प्रतीत होता है कि उक्त पाइपलाइन बिछाने के प्रयोजनों के लिए इस अधिसूचना में उपाबद्ध अनुसूची में वर्णित भूमि के उपयोग के अधिकार का अर्जन करना आवश्यक है ;

अतः केन्द्रीय सरकार पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) की धारा 3 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उनमें उपयोग के अधिकार का अर्जन करने के अपने प्राण्य को घोषणा करती है ;

उक्त अनुसूची में वर्णित भूमि में हितवद्ध कोई व्यक्ति राजपूत में यथाप्रकाशित इस अधिसूचना की प्रतियां माधारण जनता को उपलब्ध करा दिए जाने की तारीख से 21 दिन के भीतर उनमें उपयोग के अधिकार का अर्जन या भूमि में पाइपलाइन बिछाने के सम्बन्ध में आपत्ति लिखित रूप में श्री हनुमान सहाय बागड़ा, संकर्ष अधिकारी और सक्षम प्राधिकारी

उत्तिय। आयल कॉर्पोरेशन लिमिटेड, कान्डला-भटिन्डा पाइपलाइन परियोजना, डी-45 बी, सुभाष मार्ग "सी" स्कीम अयपुर-302 901 को कर सकते हैं।

अनुसूची

तहसील : पीण्डवाडा जिला : मिरोही राज्य : राजस्थान				
क्षेत्रफल				
गाँव का नाम	खसरा नं.	हेक्टेयर	घर	वर्गमीटर
1	2	3	4	5
पीण्डवाडा	203	0	00	07
	193	0	00	18
	135	0	00	28
	136	0	01	00
	137	0	00	97

[संख्या आर.31015/24/92-ओ. एन.-I.]

कुलदीप सिंह, अधर सचिव

New Delhi, the 12th January, 1993

S.O. 223.—Whereas it appears to the Central Government that it is necessary in the public interest that for the transport of Petroleum from Kandla in the State of Gujarat to Bhatinda in the State of Punjab, via Rajasthan and Haryana, pipelines should be laid by the Indian Oil Corporation Limited;

And whereas it appears that for the purpose of laying such pipelines it is necessary to acquire the right of user in the land described in the Schedule annexed to this notification;

Now, therefore, in exercise of the powers conferred by sub-section (i) of section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Central Government hereby declares its intention to acquire the right of user therein;

Any person interested in the land described in the said Schedule may within 21 days from the date on which the copies of this notification, as published in the Gazette of India, are made available to the general public object in writing to the acquisition of the right of user therein or laying of the pipeline under the land to Shri H. S. BAGERA, Liaison Officer and Competent Authority, Indian Oil Corporation Limited, Kandla-Bhatinda Pipeline Project, D-45/B, SUBHASH MARG, 'C' SCHEME JAIPUR-302001.

SCHEDULE

Tehsil : Pinwara District : Sirohi State : Rajasthan				
Name of Village	Khattri No.	Area Hectare	Area Centiare	
1	2	3	4	5
Pinwara	203	0	00	07
	193	0	00	18
	135	0	00	28
	136	0	01	00
	137	0	00	97

[No.R-31015/24/92—O.P.]

KULDIP SINGH, Under Secy.

नई दिल्ली, 12 जनवरी, 1993

का. भा. 224.—केन्द्रीय सरकार को यह प्रतीत होता है कि लोकहित में आवश्यक है कि गुजरात राज्य से कान्डला से पंजाब राज्य में भटिन्डा तक राजस्थान और हरियाणा से होकर पेट्रोलियम के परिवहन के लिए इच्छित आयल कॉर्पोरेशन लिमिटेड द्वारा पाइपलाइन बिछाई जाए ;

और ऐसा प्रतीत होता है कि उक्त पाइपलाइन बिछाने के प्रयोजनों के लिए इस अधिसूचना से उल्लेख अनुसूची में वर्णित भूमि के उपयोग के अधिकार का अर्थन करना आवश्यक है ;

अतः केन्द्रीय सरकार, पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्थन) अधिनियम, 1962 (1962 का 50) का धारा 3 की धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, उक्त उपयोग के अधिकार का अर्थन करने के लिये अधिसूची की घोषणा करती है ;

इस अनुसूची में वर्णित भूमि में हितवादी कोई व्यक्ति राजपत्र में यथाप्रकाशित इस अधिसूचना की प्रतियाँ सार्वजनिक जनता को उपलब्ध करा दिए जाने की तारीख से 21 दिन के सन्दर्भ में उपयोग के अधिकार का अर्थन या भूमि में पाइपलाइन बिछाने के सन्दर्भ में आपत्ति लिखित रूप में श्री हनुमान सह्याय बागड़ा संकेत अधिकारी और मुख्य प्राधिकारी, इच्छित आयल कॉर्पोरेशन लिमिटेड, कान्डला-भटिन्डा पाइपलाइन परियोजना डी-45/बी, सुभाष मार्ग "सी" स्कीम जयपुर-302001 को कर सकते हैं।

अनुसूची

तहसील : पाली जिला : पाली राज्य : राजस्थान				
क्षेत्रफल				
गाँव का नाम	खसरा नं.	हेक्टेयर	घर	वर्गमीटर
1	2	3	4	5
कीरथा	106	0	01	80
	107	0	00	50
	102	0	00	20

[संख्या : आर.31015/24/92-ओ. एन.-I.]

कुलदीप सिंह, अधर सचिव

New Delhi, the 12th January, 1993

S.O. 224.—Whereas it appears to the Central Government that it is necessary in the public interest that for the transport of Petroleum from Kandla in the State of Gujarat to Bhatinda in the State of Punjab, via Rajasthan and Haryana, pipelines should be laid by the Indian Oil Corporation Limited;

And whereas it appears that for the purpose of laying such pipelines it is necessary to acquire the right of user in the land described in the Schedule annexed to this notification;

Now, therefore, in exercise of the powers conferred by sub-section (i) of section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Central Government hereby declares its intention to acquire the right of user therein;

Any person interested in the land described in the said Schedule may within 21 days from the date on which the copies of this notification, as published in the Gazette of India, are made available to the general public object in

writing to the acquisition of the right of user therein or laying of the pipeline under the land to Shri H. S. BAGERA, Liaison Officer and Competent Authority, Indian Oil Corporation Limited, Kandla-Bhatinda Pipeline Project, D-45/B, SUBHASH MARG, 'C' SCHEME JAIPUR-302001.

SCHEDULE

Tehsil : Pali	District : Pali	State : Rajasthan		
		Area		
Name of Village	Khasra No.	Hec- tare	Are	Centi- tare
1	2	3	4	5
Kirwa	106	0	01	80
	103	0	00	50
	102	0	00	20

[No. R-31015/24/92—O.R.I.]

KULDIP SINGH, Under Secy.

गई दिल्ली, 12 जनवरी, 1993

का. आ. 225 — केन्द्रीय सरकार को यह प्रतीत होता है कि कोकटिह में आवश्यक है कि गुजरात राज्य में कोकटिह से गुजरात राज्य में कोकटिह तक राजस्थान और हरियाणा से होकर पेट्रोलियम के परिवहन के लिए इंडियन आयल कॉर्पोरेशन लिमिटेड द्वारा पाइपलाइन बिछाई जाए।

और ऐसा प्रतीत होता है कि उक्त पाइपलाइन बिछाने के प्रयोजन के लिए इस अधिसूचना में उपासक अनुसूची में वर्णित भूमि के उपयोग के अधिकार का अर्थन करना आवश्यक है ;

अतः केन्द्रीय सरकार पेट्रोलियम और खनिज पाइपलाइन : भूमि के उपयोग के अधिकार का अर्थन अधिनियम, 1962 (1962 का 50) की धारा 3 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, इसमें उपरोक्त के अधिकार का अर्थन करने के अपने शाय की घोषणा करता है ;

उक्त अनुसूचा में वर्णित भूमि में निम्नलिखित कोटि व्यक्ति, राजपूत में यथाशक्ति इस अधिसूचना को प्रतियां साधारण जनता को उपलब्ध करा दिए जाने का तादीक्ष से 21 दिनों के भीतर उनमें उपयोग के अधिकार का अर्थन या भूमि में पाइपलाइन बिछाने के सम्बन्ध में आवश्यक निश्चिन्त रूप में या अनुमान अथवा बाधना, सार्वजनिक अधिकारों और सक्षम प्राधिकारों इंडियन आयल कॉर्पोरेशन लिमिटेड कोकटिह-मडिहा पाइपलाइन परियोजना-सी-15/बी, मुम्बाय मार्ग "सी" स्कीम जयपुर-302 001 को कर सकेगा ।

अनुसूची

तहसील : पाली	जिला : पाली	राज्य : राजस्थान		
क्षेत्रफल				
गाँव का नाम	खसरा नं.	हेक्टेयर	अन	वर्गमीटर
1	2	3	4	5
मोरिया	64	0	00	30
	70	0	02	20

[संख्या : रा-31015/24/92—ओ.आर.।]

कुलदीप सिंह, अवर सचिव

New Delhi, the 12th January, 1993

S.O. 225.—Whereas it appears to the Central Government that it is necessary in the public interest that for the transport of Petroleum from Kandla in the State of Gujarat to Bhatinda in the State of Punjab, via Rajasthan and Haryana, pipelines should be laid by the Indian Oil Corporation Limited;

And whereas it appears that for the purpose of laying such pipelines it is necessary to Acquire the right of user in the land described in the Schedule annexed to this notification;

Now, therefore, in exercise of the powers conferred by sub-section (i) of section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Central Government hereby declare its intention to acquire the right of user therein;

Any person interested in the land described in the said Schedule may within 21 days from the date on which the copies of this notification, as published in the Gazette of India, are made available to the general public object in writing to the acquisition of the right of user therein or laying of the pipeline under the land to Shri H. S. BAGERA, Liaison Officer and Competent Authority, Indian Oil Corporation Limited, Kandla-Bhatinda Pipeline Project, D-45/B, SUBHASH MARG, 'C' SCHEME JAIPUR-302001.

SCHEDULE

Tehsil : Pali		District : Pali		State : Rajasthan	
Name of Village	Khasta No.	Area			
		Hec- tare	Are	Centi- tare	
1	2	3	4	5	
Moriya	64	0	00	30	
	70	0	02	20	

[No. R-31015/24/92—O.R.I.]

KULDIP SINGH, Under Secy.

गई दिल्ली, 14 जनवरी, 1993

का.आ. 226 — केन्द्रीय सरकार ने, पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्थन) अधिनियम, 1962 (1962 का 50) (जिसमें इसमें इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 6 की उपधारा (1) के अधीन जारी की गई भारत सरकार के पेट्रोलियम और प्राकृतिक गैस मंत्रालय की अधिसूचना संख्या का.आ. 206 तारीख 18 जनवरी, 1993, द्वारा जो भारत के राजपूत, भाग 2, खंड 3, उपखंड (ii) के पृष्ठ 362 से 368 पर प्रकाशित हुई थी, यह घोषणा की थी कि पेट्रोलियम के परिवहन के लिए पाइपलाइन बिछाने के प्रयोजन के लिए उक्त अधिसूचना सन 1962 में विनिर्दिष्ट भूमि में उपयोग के अधिकार का अर्थन किया जाना चाहिए;

और केन्द्रीय सरकार के ध्यान में यह लाया गया है कि राजपूत में उक्त अधिसूचना के प्रकाशन में टंकण और मूद्रण प्रकृति की कतिपय गलतियां हुई हैं;

अतः अब, केन्द्रीय सरकार उक्त अधिनियम की धारा 6 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, उक्त अधिसूचना में सन 1962 में विनिर्दिष्ट भूमि में विनिर्दिष्ट भूमि में उपयोग के अधिकार का अर्थन किया जाना चाहिए;

पृष्ठ संख्या 362 अनुसूची में तहसील का नाम "मोरिया" के स्थान पर "महला" पड़े।

पृष्ठ संख्या 365: सधानखर्क गांव के स्तम्भ 3 के नीचे, किला संख्या "66/21" एवं "66/22" के स्थान पर क्रमशः "66/2/1" एवं "66/2/2" पढ़ें।

पृष्ठ संख्या 367: ताशवली गांव के स्तम्भ 7 के नीचे, किला संख्या 27/09 के सामने "14" के स्थान पर "13" पढ़ें। कसौरे गांव के स्तम्भ 8 के नीचे, किला संख्या 94/19/2 के सामने, "85" के स्थान पर "93" पढ़ें।

स्तम्भ 4 के नीचे, किला संख्या "94/31" के स्थान पर "99/21" पढ़ें।

पृष्ठ संख्या 368: कसौरे गांव के स्तम्भ 4 के नीचे, किला संख्या 96 के सामने, "1" के स्थान पर "2" पढ़ें।

स्तम्भ 8 के नीचे, किला संख्या 103/06 के सामने, "31" के स्थान पर "51" पढ़ें।

यह और कि केन्द्रीय सरकार, उक्त अधिनियम की धारा 6 की उप-धारा (4) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यहू निर्देश देती है कि उक्त भूमि के उपयोग का अधिकार केन्द्रीय सरकार में निहित होने के बजाय, सभी विधायकों से मुक्त होकर, दृष्टिगत ऑयल कॉर्पोरेशन लिमिटेड में निहित होगा।

[संख्या आर-31015/20/92-अं आर-1]

कुलदीप सिंह, प्रवर सचिव

New Delhi, the 14th January, 1993

S.O. 226.—Whereas by the notification of the Government of India in the Ministry of Petroleum and Natural Gas No. S.O. 36, 37, 40 and 41, dated the 4th January, 1992, published in the Gazette of India, Part II, Section 3, Sub-section (ii) at pages 19 to 23, 26 to 28, 44 to 50 and 58 to 67 respectively, issued under sub-section (1) of section 6 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962) (hereinafter referred to as the said Act), the Central Government declared that the right of user in the lands specified in the Schedule appended to that notification for the purpose of laying pipelines for transport of petroleum, should be acquired;

And whereas, it has been brought to the notice of the Central Government that certain errors of typing and printing nature have occurred in the publication of the said notification in the Gazette;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 6 of the said Act, the Central Government hereby amends the Schedule appended to the said notifications as follows :

at page 21, in village Munak, against killa no. 194/06, in column 5, for '06' read '05';

at page 27, in village Bhadawas, in column 3, for killa no. '21/22' read '21/12', against killa no. 54/24/2, in column 6, for '28' read '82', in column 3, for killa no. '106/0/2' read '106/4/2', against killa no. 107/6, in column 5, for '13' read '12', in column 3, below killa nos. 109/20 and above killa no. 109/22, insert killa no. '21', against so amended killa no. 109/21, in column 5, insert '10', in village Bhambadi, against killa no. 16/5, in column 6, for '41' read '04';

at page 45, in village Hajwana, in column 3, for killa no. '50' read '05';

at page 46, in village Pundri, against killa no. 205/07, in column 6, '72' read '12', in column 1, for the name of village 'Pundra' read 'Pundri', against killa no. 246/11, in column 6, for '76' read '36'.

at page 48, in village Mundri, against killa no. 103/8, in column 6, for '19' read '16';

at page 50, in village Siwan, against killa no. 390/23/1, in column 6, for '3' read '37'.

at page 60, in village Pabana Hassenpur, against killa no. 146/05, in column 7, insert '07', in village Padha, in column 3, against below killa no. 133 and above killa no. 133/22 for '133/22' appearing for the first time read '133/21',

at page 61, in village Padha, against killa no. 176/01, in column 8, for '50' read '05',

at page 63, in village Alavala, in column 3, for killa no. '60/16' appearing for the second time read '60/17',

at page 67, in village Rugsana, against killa no. 90/5, in column 8, for '7' read '78', against killa no. 101/25, in column 8, for '0' read '03', against killa no. 109/01 in column 6, for '5' read '0' and against killa no. 109/3/1, in column 6 for '2' read '0'.

And further in exercise of the powers conferred by sub-section (4) of section 6 of the said Act, the Central Government hereby directs that the right of user in the said lands shall instead of vesting in the Central Government, vest free from all encumbrances in the Indian Oil Corporation Limited.

[No. R-31015/20/92-OR I]

KULDIP SINGH, Under Secy.

नई दिल्ली, 14 जनवरी, 1993

का.आ. 227 -- केन्द्रीय सरकार ने, पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) (जिसे हमें इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 6 की उपधारा (1) के अधीन जारी की गई भारत सरकार के पेट्रोलियम और प्राकृतिक गैस मंत्रालय की अधिसूचनाएं संख्या का.आ. 36, 37, 39, 40 एवं 41, तारीख 4 जनवरी, 1992, द्वारा जो भारत के राजपत्र, भाग 2, खंड 3, उपखंड (ii) के पृष्ठ क्रमशः 15 से 19, 24 से 26, 35 से 36, 37 से 44 एवं 50 से 58 पर प्रकाशित हुई थी, यह घोषणा की थी कि पेट्रोलियम के परिवहन के लिए पाइपलाइन बिछाने के प्रयोजन के लिए उक्त अधिसूचना संगत अनुसूची में विनिर्दिष्ट भूमि में उपयोग के अधिकार का अर्जन किया जाता चाहिए,

और केन्द्रीय सरकार के ध्यान में यह लाया गया है कि राजपत्र में उक्त अधिसूचना के प्रकाशन में टंकण और मुद्रण प्रकृति की कतिपय त्रुटियां हुई हैं:

अतः अब, केन्द्रीय सरकार, उक्त अधिनियम की धारा 6 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, उक्त अधिसूचना में संलग्न अनुसूची का निम्न प्रकार से संशोधन करती है:

पृष्ठ संख्या 15: भातवडा गांव के स्तम्भ 3 नीचे, "14/5/3" के स्थान पर "14/5/1" पढ़ें।

पृष्ठ संख्या 16: बदलावा गांव के स्तम्भ 2 के नीचे में संख्या 108 के निकाल दें।

स्तम्भ 3 के नीचे संख्या "05" एवं "31" के स्थान पर क्रमशः संख्या 103 लिखें।

स्तम्भ 4 के नीचे, किला संख्या 103/06 के सामने, "05" के स्थान पर "0" पढ़ें।

स्वम्भ 2 के नीचे से संख्या "105" को
स्वम्भ 3 के नीचे, संख्या "03" एवं "02" के मध्य
किला संख्या 105 निवेश करें।

मुक्त गांव के स्वम्भ 5 के नीचे, किला संख्या 144/10/
1, 144/10/2 एवं 144/11/1 के सामने, "06",
"08" एवं "00" के स्थान पर क्रमशः "00", "06"
एवं "08" पढ़ें।

स्वम्भ 6 के नीचे किला संख्या 186/03 के सामने,
"25" के स्थान पर "26" पढ़ें।

पृष्ठ संख्या 17 : मुक्त गांव के स्वम्भ 3 के नीचे एवं पक्ति 34 में,
किला संख्या "282" के स्थान पर "283" पढ़ें।

पृष्ठ संख्या 18 : अन्नर गांव के स्वम्भ 7 के नीचे, किला संख्या 254
11 के सामने "8" के स्थान पर "12" पढ़ें।

स्वम्भ 7 एवं 8 के मध्य से संख्या "12" को निकाल
दे। स्वम्भ 8 के नीचे, किला संख्या 254/23/1 के
सामने, "1" के स्थान पर "11" पढ़ें।

स्वम्भ 8 के नीचे किला संख्या 259/95 के सामने
"31" के स्थान पर "51" पढ़ें।

पृष्ठ संख्या 19 : स्वम्भ 3 के नीचे, किला संख्या "285/23/3" के स्थान
पर 285/22/3 पढ़ें।

गांव के स्वम्भ 3 के नीचे एवं पक्ति 11 में,
अधूरी लिखी संख्या के स्थान पर "6" पढ़ें।

पृष्ठ संख्या 35 : मवराना गांव के स्वम्भ 6 के नीचे, किला संख्या 51/
11 के सामने, 95 के स्थान पर "05" पढ़ें।

पृष्ठ संख्या 36 : मुलखा गांव के स्वम्भ 4 के नीचे, किला संख्या 46/15
के सामने "12" के स्थान पर "2" पढ़ें।

पृष्ठ संख्या 40 : ककौत गांव के स्वम्भ 6 के नीचे, किला संख्या 52/
19 के सामने, "15" के स्थान पर "14" पढ़ें।

स्वम्भ 3 के नीचे, किला संख्या "23/24" के स्थान पर
23/04 पढ़ें।

पृष्ठ संख्या 41 : ककौत गांव के स्वम्भ 6 के नीचे, किला संख्या 119/
09 के सामने "27" के स्थान पर "28" पढ़ें।

कुलदाम गांव के स्वम्भ 6 के नीचे, किला संख्या
46/15/1 के सामने, "58" के स्थान पर "59" पढ़ें।

स्वम्भ 6 के नीचे, किला संख्या 58/22/2 के सामने,
"63" के स्थान पर "53" पढ़ें।

पृष्ठ संख्या 43 : सौजन गांव के स्वम्भ 6 के नीचे किला संख्या 351/
21 के सामने "52" के स्थान पर "62" पढ़ें।

स्वम्भ 5 के नीचे, किला संख्या 369/11 के सामने,
"0" के स्थान पर "01" पढ़ें।

स्वम्भ 5 के नीचे, किला संख्या 390/11 के सामने,
संख्या "11" निवेश करें।

स्वम्भ 6 के नीचे, किला संख्या 451/11/1 के सामने,
"38" के स्थान पर "29" पढ़ें।

स्वम्भ 3 के नीचे, संख्या 20 एवं 3 के मध्य, किला
संख्या "463" का निवेश करें।

पृष्ठ संख्या 51 : पत्रावा हसनपुर गांव के स्वम्भ 3 के नीचे किला संख्या
"88/87" के स्थान पर "88/07" पढ़ें।

स्वम्भ 5 के नीचे, किला संख्या 103/07 के सामने,
"03" के स्थान पर "08" पढ़ें।

स्वम्भ 8 के नीचे, किला संख्या 129/25 के सामने
अधूरी लिखी संख्या के स्थान पर "84" पढ़ें।

पृष्ठ संख्या 53 : पाड़ा गांव के स्वम्भ 7 के नीचे, किला संख्या 173/
24 के सामने "08" के स्थान पर "04" पढ़ें।

पृष्ठ संख्या 54 : स्वम्भ 7 एवं 8 के नीचे, किला संख्या 20 के सामने
में क्रमशः संख्या "11" एवं "89" को निकाल दे।
स्वम्भ 8 के नीचे, किला संख्या 20/01 के सामने,
संख्या "89" का निवेश करें।

पृष्ठ संख्या 55 : करमाचौर गांव के स्वम्भ 5 के नीचे, किला संख्या
12/01 के सामने "14" के स्थान पर "18" पढ़ें।
स्वम्भ 7 के नीचे किला संख्या 19/06 के सामने,
"00" के स्थान पर "09" पढ़ें।

यह और कि केन्द्रीय सरकार, उक्त अधिनियम की धारा 6 की
उपधारा (4) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह निदेश
देती है कि उक्त भूमि के उपयोग का अधिकार केन्द्रीय सरकार में निहित
होने के बजाय, सभी श्रिकलाओं में मुक्त होकर, इंडियन ऑयल कार्पोरेशन
लिमिटेड में निहित होगा।

[संख्या आर-31015/20/92-अ.आर-1]

कुलदीप सिंह, अवर सचिव

New Delhi, the 14th January, 1993

S.O. 227.—Whereas by the notification of the Government of India in the Ministry of Petroleum and Natural Gas No. S.O. 206, dated the 18th January, 1992, published in the Gazette of India, Part II, Section 3, Sub-section (ii) at pages 368 to 374, issued under sub-section (1) of section 6 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (56 of 1962) (hereinafter referred to as the said Act), the Central Government declared that the right of user in the lands specified in the Schedule appended to that notification for the purpose of laying pipelines for transport of petroleum, should be acquired.

And whereas it has been brought to the notice of the Central Government that certain errors of printing nature have occurred in the publication of the said notification in the Gazette;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 6 of the said Act, the Central Government hereby amends the Schedule appended to the said notification as follows :—

at page 370, in village Parbhawat, against killa no. 25/4, in column 8, for '1' read '51';

at page 371, in village Ladana Chakku, against killa No. 11/25, in column 8, for "27" read "37";

at page 373 in village Taranwali, against killa no. 17/4, in column 7, for '17' read '10'.

And further in exercise of the powers conferred by sub-section (4) of section 6 of the said Act, the Central Government hereby directs that the right of user in the said lands shall instead of vesting in the Central Government vest free from all encumbrance in the Indian Oil Corporation Limited.

[No. R-31015/20/92-OR I]

KULDIP SINGH, Under Secy.

अथ संवत् १९९२

नई दिल्ली, 8 जनवरी, १९९२

का आ 228.—औद्योगिक विवाद शक्तिविधम 1947 (1947 का 14) का धारा 17 के अनुसूच में केन्द्रिय सरकार सार्वजनिक स्टेट बैंक के प्रबंधन के संबंध निम्नलिखित और उनके कार्यकर्ताओं के बीच अनुबंध में निहित औद्योगिक विवाद में केन्द्रिय सरकार औद्योगिक अधिकरण सं. 1, धनबाद के पंचाट को प्रकाशित करने है जो केन्द्रिय सरकार को 7-1-93 को प्राप्त हुआ था।

[संख्या एन-12011/36/85 डी II (ए)]

एम. के. जैन, डी.ई. अधिकारी

MINISTRY OF LABOUR

New Delhi, the 8th January, 1993

S.O. 228.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, No. 1, Dhanbad, as shown in the Annexure, in the industrial dispute between the employers in relation to the management of State Bank of India and their workmen, which was received by the Central Government on the 7-1-93.

[No. L-12011/36/85-D.II(A)]

S. K. JAIN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of a reference under section 10(1)(d) of the Industrial Disputes Act, 1947,

Reference No. 13 of 1985

PARTIES :

Employers in relation to the management of State Bank of India.

AND

Their Workmen.

PRESENT :

Shri S. K. Mitra, Presiding Officer.

APPEARANCES :

For the Employers : Shri Anil Shankar Prashad, Asstt. Law Officer, alongwith Shri A. P. Mukherjee, Br Manager.

For the Workmen : Shri G. K. Verma, General Secretary.
STATE : Bihar. INDUSTRY : Banking.

Dated, the 28th December, 1992

AWARD

By Order No. L-12011/36/85-D.II(A), dated, the 14th October, 1985, the Central Government in the Ministry of Labour, has, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :

"Whether the action of the management of State Bank of India to transfer the three under mentioned workmen from Monghyr Branch to the branches shown against their names is justified ?

(i) Shri Ashok Kumar, Clerk, transferred to Colgong Branch.

(ii) Shri T. K. Bose, Clerk, transferred to Banka Br.

(iii) Shri Bindeshwari Prasad Yadav, Head Clerk transferred to Sheikhpura Branch. If not to what relief the workmen are entitled ?"

2. The case of the management of State Bank of India, as disclosed in the written statement-cum-rejoinder, details apart, is as follows :

The present reference is not maintainable in law as well as in fact. The dispute became nonest on 23-9-85, when the concerned workmen were transferred on their own request to places other than those mentioned in the schedule of reference. The transfer of S/Shri Ashok Kumar to Colgong Branch, that of T. K. Bose to Banka Branch and that of Bindeshwari Prasad Yadav to Sheikhpura Branch were never effected and they were re-transferred on their own request to ADB Lakhisarai Sultanganj and Asarganj Branch respectively. They had accepted this transfer and hence there remains no dispute to adjudicate upon. These facts were brought to the notice of the appropriate Government, and the Central Government by letter dated 1-3-1988 supplemental to the order of reference has intimated that the dispute has ceased to exist. Anyway, the management of State Bank of India, with a view to toning up discipline, punctuality, customer service and internal house keeping which was at a low ebb at the Monghyr Branch and pursuant to the instructions issued by the Government of India, Ministry of Finance, to rotate employees in Banks regularly and on an 'on-going-basis', four clerical cadre employees from the Munghyr Branch were transferred to Branch outside Monghyr on administration exigencies. The order transfer was to take effect immediately. But as the concerned employees had gone on leave till 24-11-84 they were ordered to be relieved after the close of business on 24-11-84. The said order was also displayed on the Notice Board of the said Branch. Pursuant to the order of transfer, G. P. Singh, one of the workmen joined his duty at the new place of posting. But the three other employees, B. P. Yadav, Ashok Kumar and T. K. Bose did not join their duty at new place of posting in spite of the fact that they were relieved from duties from their earlier place of posting. The State Bank of India Employees Union which is not recognised by the Bank through its General Secretary by letter dated 28-11-84 raised an industrial dispute before the Asstt. Labour Commissioner, Patna, over the aforesaid transfer of the three employees who had not joined their duties at their new places of posting. Conciliation proceeding ensued but that ended in a failure and the A.L.C. (C), Patna, by letter dated 2-4-85 submitted his failure report to the Government of India. None of the three employees joined their duty at the new place of posting. The State Bank of India Employees Union to league with some other union members of other Banks started a State wide agitation demanding inter alia reconsideration of the Government policy to rotate employees of the Bank on an 'on-going-basis'. The union in connivance with the members of some other unions of other Banks started refusing to accept State Bank of India cheques/instructions in the clearing house at Patna and a member of other Centre in the State of Bihar. All over the State clearing houses operations had come to a near standstill position. The bulk of the business transactions which are done through the Bank came to a virtual halt. The agitation caused set back to the economy of the State. Apart from private business transaction Government transaction suffered. The authorities of the State Bank of India sent details/facts regarding agitation to Government of India on 5-6-85. But the union remained adamant. The three workmen as aforesaid did not join their duty at the new place of posting. They even failed/neglected to submit leave application for a considerable period and had thus been absenting unauthorisedly. These employees had not been sanctioned leave but continued to remain absent from duty unauthorisedly. Even, if the leave due to these employees was taken into account, they had taken leave much in excess of what was due to them. This being the position, the management in accordance with the Fourth Bipartite settlement directed the employees by notice sent to these employees to report for duty within 30 days of the notice failing which it would be deemed that they had voluntarily retired from service. Once again the union raised an industrial dispute before the Asstt. Labour Commissioner (C), Patna by letter dated 27-7-85 over the transfer of the three office bearers and issuance of notice for their voluntary transfer by the management of State Bank of India. On 23-8-85 both the parties appeared before the A.L.C. (C) Patna and the proceeding was adjourned to 9-9-85. In the mean time on 2-9-85 the three transferred employees made representations to the management of the Bank against the aforesaid transfer and re-

requested for being posted at the Branch in the vicinity of Monghyr and also gave their choice. The Bank management, upon careful consideration of the request of the said employees, was of the opinion that they could not be transferred to their place of posting of choice. However, in view of the difficulties expressed by these employees, they were transferred to the Branch closer to Monghyr by letter dated 23-9-85. On 9-9-85 the Bank management filed its written comment before the A.L.C. (C), Patna and the proceeding was further adjourned to 4-10-85. Before that date the said employees requested the Bank management on 1-10-85 to post them in Monghyr and Jamalpur. On the date fixed, i.e. 4-10-85 the Bank appeared before the A.L.C. (C) but the union did not. On the said date the Bank management intimated the A.L.C. (C), Patna, that it was not going to take any action on the notice for voluntary retirement and that the management on the request of the concerned employees had transferred their places of transfer nearer Monghyr. The A.L.C. (C), Patna intimated the position to the union and intimated that in view of the situation no dispute existed and the matter should be treated as closed. In the mean time, the Government of India, on the earlier report of failure of conciliation and in the ignorance of situation has existed on 14-10-85 and without taking into account that the earlier orders of transferred were not made effective and that the employees had been transferred on their own request nearer Monghyr, made a reference to the earlier dispute regarding the transfer which not effected. The said employees joined their new place of posting on 5-5-86 to the Branches nearer Monghyr. The transfer of Award staffs in the Bank is a normal and regular practice resorted to for various purposes like career development opening of new offices and other administrative needs. Long stay of any individual at one place has proved disastrous and this may also gives rise to creation of vested interest. Hon'ble Supreme Court has also held that to attain the best results it becomes necessary to transfer workmen from one branch to another. The service conditions of the Bank employees coming within the category of Award staffs are governed by Sastry Award, as modified by Desai Award and as modified from time to time by Bilateral agreement. The recent spurt in the number of frauds committed in the banking industry has been a matter of constant concern for the management and the Central Government and one of the remedies as emphasised is to rotate employees in Banks regularly and on an 'on-going-basis'. The sponsoring union representing the concerned workmen is not a recognised union. The sole purpose of the said union is to agitate against the transfer in question and to frustrate the decision of the Government of India and to demonstrate its dominance over the recognised union. Transfer is an incidence of service and the Bank has been transferring and rotating the members of the staff for administrative exigencies on an 'on-going-basis' and so the transfer of these three concerned workmen should not be taken into consideration in isolation. The management has not effected transfer of these employees arbitrarily and so there has been no iota of discrimination as alleged or in violation of provision of that award. In the circumstances, the management has prayed that the reference be answered in favour of the management of the Bank.

3. The case of the sponsoring union, State Bank of India Employees Union (Bihar State), Patna, as appearing in the written statement, briefly stated, is as follows :

The State Bank of India Employees Union (Bihar State), (hereinafter referred to as Employees Union) is a registered trade union and the concerned workmen are its office bearers. The management of the Bank recognises and patronises another union. The overwhelming majority of the workmen working at the Bank's Monghyr Branch are the members of the Employees Union. The employees under the banner of the Employees Union have been regularly fighting against the irregular practice of the Bank in the matter of Staff administration and unfair loan distribution to weaker Section of the Society. The Bank management were consistently attempting to lure or frighten away members of the union so that employees working at other branches in and around Monghyr may be discouraged to join the Employees Union. The General Secretary of the Employees Union by letter dated 10-7-84 pointed to the Regional Manager, Region-I, Bhagalpur Regional Office with a copy to the General Manager (Operations), Patna Local Head Office, the conspiracy being hatched by the other rival Association in connivance with the Bhagalpur Regional Office to victimise the important

functionaries of the Employees Association at Monghyr Branch. On 24-11-84 S/Unit Ashok Kumar, Monghyr Branch Secretary of the union as well as a member of Provincial Executive/Working Committee, T. K. Bose, another member of Provincial Executive/Working Committee and Emdeshwar Prasad Yadav, State Organising Secretary of the union were served order of transfer violating all principles and rules of transfer. These transfer orders made with ulterior motive of crippling the Employees Union and to humiliate other employees. The Bank violated the directions given in para 555 of the Sastry Award by effecting transfer of office bearers of a registered Bank Employees Union. The Bank also violated the rules of transfer of clerical staff as envisaged in the Bank's own personnel circular No. 69 of 1953 which among other things stated that clerical staff shall be transferred only within the Municipal limit of the Centre. The Bank violated also its own rules for not effecting transfer of office bearers of registered unions as envisaged in their personnel Circular No. 12 of 1984 which, inter alia, stated that the Central/Working Executive Committee members of the Circle Staff Union and their Local/Branch Secretaries were not to be subjected to any transfer at all. The Bank has four Branches in Monghyr town and another two in the adjoining town of Jamalpur. But the management vindictively transferred the aforesaid workmen about 100 kms. away from Monghyr in three directions in pursuance of ill-designs. Three employees were not surplus staff at Monghyr branch nor the branches where they were transferred were new offices/branches. There was no exigency of service requiring these employees to be posted at the branches. Even senioritywise there were other employees senior to them. No complaint was ever made against these employees for not discharging any of their allotted duties or for committing any misconduct. After raising demand before the management for cancellation of the impugned transfer orders, an industrial dispute was raised before the A.L.C. (C), Patna, on 28-11-84 against vindictive and mala fide transfer. The management was requested by A.L.C. (C), Patna, not to effect transfer of the office bearers of the union in the interest of industrial peace and harmony till disposal of the dispute. The management took a week's adjournment on the plea that they had to collect papers from Bhagalpur Regional Office. The adjournment was taken by the management only to effect the transfers ignoring the conciliation proceeding and accordingly the employees I.P.Cs were prepared and sent to the Branches where they were earlier transferred. It is alleged that the management did not listen to any counsel of the conciliation officer and ultimately the conciliation proceedings ended in a failure. While the whole matter was pending before the Central Government Labour Ministry, the management in violation of latest Bipartite Agreement, illegally served notice to the employees concerned for voluntary cessation of employment on 27-5-85. Sensing that the dispute was about to be referred for adjudication, the management served letters to the employees changing their place of transfer. These new postings, once again were made in violation of Sastry Award and the Bank's own transfer policy. The management intended the concerned workmen to starve and thereby to compel them to accept the illegal transfer order. The Bank management did not pay them their salaries after relieving them from Monghyr Branch. Those members of the staff who left the union and joined the Bank's patronised Association were treated differently. Shail Kishore Sinha of Monghyr Branch was first transferred from Monghyr Branch to Shankarpur Branch about 28 Kms. away from Monghyr. He was a member of Employees Association, when he joined the patronised Association, he was re-posted at Kularampur Branch which is 1 K.M. away from his village home. Likewise, Ram Chandra Jha of Deoghar Branch Hridaya Ranjan Sharan etc. were treated farwardly by the management in the matter of posting, but when they left the Union Employees and joined the patronised Association. The concerned workmen were advised by the Branch Manager and the Regional Manager to leave the union and join the patronised Association, if they wanted to come back to Monghyr. Had they accepted their advices they would have been transferred back to Monghyr. The members of the patronised Association who refused to accept the transfer orders posting them at Branches outside the same Centre/Municipal/Urban agglomeration area were retransferred back to the same Centre and were paid wages. For example, Chinteshwar Prasad Singh, Head Clerk, Patna Main Branch was transferred to Hajipur Branch on 16-3-85. He did not join Hajipur Branch and thereafter he was allowed to re-join Patna Main Branch on 3-12-85. He was transferred to Kadamkuan Branch hardly 2 Kms. away from

Patna Main Branch. In view of the facts mentioned above, it will appear that the transfers of S₂Shri Ashok Kumar to Colgong and then to A.D.B. Lakhisarai, that of T. K. Bose to Banka and then to Sultanganj and that of Bindeshwari Prasad Yadav to Sheikhpura and then to Asarganj, all outside Monghyr Municipal/Urban agglomeration area were unjustified being violative of rules of transfer as envisaged in Sastry Award, Bank's own Patna Local Head Office Personnel Circular Nos. 69 of 1983 and 72 of 1984 and vindictive. These transfers are also intended to destabilise the Employees union. Hence, the union has prayed that an award is passed in favour of the concerned workmen directing the management to retransfer them to Monghyr Branch with all back wages and other benefits with effect from 1-12-84.

4. In rejoinder, the Bank has denied and disputed that the concerned workmen were office bearers of the Employees Union. The Bank has also denied and disputed each and every fact as stated by the Employees union impinging on transfer of the concerned workmen to the branches outside Monghyr.

5. In rejoinder to the written statement of the management, the Employees Union has stated that the concerned workmen did not accept the present posting of their transfer nor these transfers were effected at their own request. According to the union, the industrial dispute exists and so the present industrial dispute is maintainable. The union has denied and disputed each and every allegations made against its activities made in the interest of the employees of the Bank. The union has reiterated that as per the provisions of Sastry Award and the circulars as aforesaid, the management was not justified in transferring the concerned employees to the branches outside Monghyr.

6. The management of the Bank, in order to justify its action, has examined one witness, namely MW-1 Sri A. P. Mukherjee, earlier posted to local Head Office of the Bank at Patna and now posted as Branch Manager, Khusrupur Branch of the Bank and laid in evidence a number of documents which have been marked Exts. M-1 to M-17/3.

On the other hand, the Employees union has examined the concerned workman and three other witnesses, namely, WW-4 Saligram Sharma, Head Clerk of the Bank, WW-5 T. K. Guha, Dy. General Secretary of the Employees Union and WW-6 P. S. Pal, posted to Patna Head Office of the Bank and laid in evidence a huge number of documents which have been marked Exts. W-1 to W-86.

7. The present industrial dispute was raised by the General Secretary, State Bank of India Employees Union (Bihar State) (hereinafter referred to as 'Employees Union'). The Employees Union is a registered union as appearing from the certificate of registration of trade unions issued by the Registrar of trade union for the State of Bihar (Ext. W-69), Constitution of Union (Ext. W-70) and the letter of the Government (Ext. W-79). Admittedly, the Employees Union is not recognised by the management of State Bank of India. But it is not necessary that the sponsoring union should be a registered trade union or recognised trade union. Once it is shown that a body of substantial number of workmen, either acting through a union or otherwise had sponsored the workmen's cause, it is sufficient to cover it into an industrial dispute. It has not been disputed by the management that the sponsoring union represents a body of substantial number of workmen. This being so, the Employees union was competent to raise the present industrial dispute.

8. It appears from the evidence of WW-1 T. K. Bose that he was appointed as Clerk-cum-Cashier in Monghyr Branch of State Bank of India on 16th January, 1979. The evidence of WW-2 Ashok Kumar discloses that he was appointed as Clerk-cum-Cashier in Monghyr Branch of State Bank of India on 11th January, 1979 and the evidence of WW-3 Bindeshwari Prasad Yadav discloses that he joined the service of the State Bank of India, Mungr Bazar Branch as Clerk in 1967 and in 1976 he was posted to Monghyr Branch of the Bank as Head Clerk on promotion. Both these three workmen were transferred from Monghyr Branch to Banka Branch, Colgong Branch and Sheikhpura Branch respectively by order of the management of the Bank dated 21st November, 1984. It appears that these workmen were on leave till 24th November, 1984, and the order of transfer was

served on them on 24th November, 1984. It is the case of the management that these transfers were not effected and on their request they were transferred to Sultanganj Branch, A.D.B. Lakhisarai Branch and Asarganj Branch. The concerned workmen requested the management by their letters dated 3rd November, 1985 to withdraw earlier orders of transfer and to permit them to re-join Monghyr Main Branch (Exts. M-1, M-1/1, M-1/2 = Exts. W-10; W-3 and W-7). It appears that the management considered their representations and changed their place of posting to different branches as stated before (Exts. W-8, W-11 and W-4). Meanwhile the Employees Union raised an industrial dispute over the transfer of the concerned workmen to their earlier places of posting. The appropriate Government made a reference of the dispute for adjudication by this Tribunal by order dated 14th October, 1985. When these workmen were transferred from their earlier places of posting to other Branch offices the matter was brought to the notice of the appropriate Government. The appropriate Government by letter dated 1st March, 1988 addressed to this Tribunal expressing its view that in view of this development it was felt that the cause of the dispute which necessitated the issue of order dated 14th October, 1985 no more existed and Industrial Tribunal is required to take these factors into account in connection with the above adjudication order (Ext. M-14).

Shri A. S. Prasad, authorised representative of the Bank, has urged before me that in view of the letter of the appropriate Government (Ext. M-14) there exists no industrial dispute in the eye of law and hence the present reference be disposed of accordingly. Shri G. K. Verma, General Secretary of the Employees Union who represented the concerned workmen in the present dispute has countered this contention by submitting that once a dispute has been referred by the appropriate Government, it has no authority to withdraw the dispute. I think that submission of Shri Verma is well founded. Hon'ble Supreme Court has held in the case of State of Bihar Vs. D. N. Sengupta reported in 1958 (II) I.L.J. 634 that the Government has no power, either expressed or implied to cancel or withdraw a reference after it has made the order of reference. This being the position, I overrule the contention of Shri A. S. Prasad and hold that the dispute is still alive as before.

On facts also the dispute is surviving because the Employees Union has assailed the authority of the management of the Bank to transfer them outside Monghyr legally. Despite, the second order of transfer of the concerned workmen were still posted outside Monghyr Branch and so the dispute survives.

9. The Employees Union has resisted the transfer of the concerned employees outside Monghyr Branch because the norms of the transfer policy of the Bank militates against such transfers. In the process the union has referred to the Paragraph 535 of the Sastry Award and two circulars, namely, Circular Per No. 69 of 1983 dated 6-4-1983 (Ext. W-23) and Circular No. 72 of 1984 dated 8-5-1984 (Ext. W-24). The relevant portion of the Sastry Award reads as follows :

"535. Policy regarding transfers is a constant source of friction between the banks and the workmen of office into unions. The cry of victimisation of office bearers and 'activists' of trade unions is raised wherever such transfers are mooted. We have found that such allegations are easily made but not so easily substantiated. Transfers are rendered necessary by exigencies of administration. The proper view to take is that transfers are normal incidents of the working of a bank and they must be left to discretion of those who guide the policy of the bank and manage its affairs. It is possible that the discretion may be abused and transfers effected on considerations other than the needs of administration. The percentage of transfers as shown by the figures furnished by some of the banks in the course of arguments leads us to the conclusion that the question of transfer, even as it is, effects only a very small number of persons. This is conceded by the workmen also. Still wherever an activist of the trade union movement as yet in its formative stage and liable to be crippled easily, is transferred a suspicion naturally arises that it is inspired by ulterior matters and the consequence thereof may be

an industrial dispute. In order that such suspicions may be avoided as far as possible we, adopting the Sen Award in this respect, give the following direction:—

- (1) Every registered bank employees union, from time to time, shall furnish the bank with the names of the President, Vice-President and the Secretaries of the union;
- (2) Except in very special cases, whenever the transfer of any of the above-mentioned office bearers is contemplated, at least five clear working days' notice should be put up on the notice boards of the bank of such contemplated action;
- (3) Any representation, written or oral, made by the union shall be considered by the bank;
- (4) If any order of transfer is ultimately made, a record shall be made by the bank of such representations and the bank's reasons for regarding them as inadequate; and
- (5) The decision shall be communicated to the union as well as to the employee concerned."

The relevant portion of the Circular Per No. 69 of 1985 (Ext. W-23) is gleaned hereinbelow:

"2. The transfers of the workmen staff are desirable administratively for the following reasons:—

- (i) For their own career development.
- (ii) To ensure against creation of vested interests.
- (iii) To man new offices and to meet other administrative needs for re-deployment of surplus staff.

3. The practice in our Bank has been to effect transfers in clerical cadre only if administratively necessary. Mostly such transfers have taken place under the 3rd category in any case there is no regular policy in this regard. The Bank has been asked by the Government to devise a regular transfer policy for the clerical staff in terms of the provisions of the SASTRY AWARD in addition to the one for officer staff. While it may not be desirable to effect clerical transfers in a big way it is necessary to have a regular policy in the interests of the institution as well as the employees.

4. I view of the aforesaid, the transfer policy for clerical staff has been discussed with several leaders of the staff Federation though there has been no consensus. The Bank has, therefore, to start with evolved a transfer policy covering only local transfers. The salient features of the transfer policy to be followed presently are as under:—

- (i) The policy would aim at movement of the clerical staff from one office to another in a phased manner without causing undue hardship or dislocation to the concerned employees.
- (ii) Clerical staff with 5 years or longer stay at one office will be liable to be transferred to another office.
- (iii) Whenever such transfers are effected, normally these employees with longer stay would be transferred first.
- (iv) Transfers would be made within the same centre/municipal/urban agglomeration area. The policy will present not apply at the centres where there is only one office of the Bank."

The relevant portion of the Circular Per No. 72 of 1984 (Ext. W-24) is re-produced hereinbelow:—

"2. In this connection we wish to further clarify as under:—

- (i) The Central/Working/Executive Committee members of the Circle Award Staff Union and their local/Branch Secretaries need not be subjected to transfer

under the policy at present. Their transfer will continue to be governed by the provisions of the Sastry Award. The position will be reviewed some time in 1985."

10. In support of its action to transfer the concerned workmen to different branches outside Monghyr the Bank has taken the stance that with a view to toning up discipline, punctuality, customer service and internal house keeping which was at a low ebb at the Monghyr Branch and pursuant to the instructions issued by the Government of India, Ministry of Finance, to rotate employees in the Banks regularly and on an 'on-going-basis' four clerical cadre employees were transferred from the Monghyr Branch of the branches outside Monghyr for administrative exigencies. It appears that besides these three concerned workmen who did not join their places of first posting, another employee, namely G. P. Singh of Monghyr Branch was posted to a branch outside Monghyr and he joined his new post there. M.W.1 A. P. Mukherjee earlier posted, to local Head Office, Patna and presently holding the post of Branch Manager, Khusropur Branch of the Bank, has stated that the management of the Bank transferred the concerned employees bonafide and in the interest of the administration of the Bank. He has further stated that the management of the Bank also took into consideration the Awards and Bi-partite settlements while making transfer of the aforesaid employees. According to him, these transfers were unavoidable and made in terms of the guideline issued by the Ministry of Finance. According to him, the transfers were made in the interest of the Bank as well as in the interest of the employees of the Bank. He has stated that these employees who were transferred were posted to Monghyr Branch for more than 10 to 15 years. But this statement that these employees were posted to Monghyr Branch for more than 10 to 15 years does not seem to be correct. As per statement of WW-1 T. K. Bose, he was appointed and posted to Monghyr Branch of the Bank on 16-1-79. The evidence of WW-2 Ashok Kumar discloses that he was appointed and posted to Monghyr Branch on 11-1-79 and the evidence of B. P. Yadav (WW-3) discloses that he was posted to Monghyr Branch on promotion as Head Clerk in 1976. On the contrary, the evidence of these witnesses indicate that there were clerical staff in the Monghyr Branch having longer stay in the branch than them.

According to MW-1 A. P. Mukherjee, administrative interest of the Bank means customers' service, and internal house keeping which was in a bad shape at the relevant time and also for career development of the employees in the opening of new branch for learning. There is no evidence on record to indicate that the Bank opened a new branch or branches and the concerned workmen were posted to those branches.

Shri Mukherjee has asserted that during October/November, 1984, various accounts, such as, balancing in current account, Savings Bank Account, term loan account, cash paid account, demand loan account, Sundry deposit account, suspense account, inter-branch item in transit account were not up-to-date. The Bank has not produced any document in support of these contentions that these accounts were not up-to-date. On the other hand the union has produced Branch Manager's Monthly Certificates for the months of July to October, 1984 (Ext. W-66 series) and all these documents show that the branch work and balancing of accounts were more or less up-to-date.

The Branch has produced Audit Inspection Report of Monghyr Branch on demand from the union which has been marked Ext. W-67. But this report submitted by the Bank does not seem to be the complete report. Even then, the report discloses that previous ratings of the Monghyr Branch were 'satisfactorily run', 'well run' and 'satisfactorily run' and the present rating were fairly well run and 'well run'. Thus there seems to be the justification for Shri Mukherjee to state that the customer service of Monghyr Branch was in a bad shape or was at a low ebb.

11. The management has asserted that the concerned workmen were re-transferred on their own request. But there is no evidence on record to support this position. On the other hand, the concerned workmen protested against such re-transfer and requested that their posting at any of the

six branches of Monghyr—Jamalpur Area (Ext. W-5, W9 and W-12). They also expressed their hardship resulting from such transfer.

12. The norms of transfer policy of the Bank are laid down in Para 535 of the Sastry Award and two circulars Exts. W-23 and W-24. It is evident that the first transfer of the concerned workmen were not done in conformance to the norms and principles laid down in these documents.

The Bank has heavily leaned on the D.O. letter of the Ministry of Finance, Department of Economic Affairs dated 12-3-85 (Ext. M-5) in support of the transfers of the concerned workmen from the Monghyr Branch. The D.O. letter refers to an earlier D.O. letter dated 23-8-84. The Ministry deprecated the tendency of continuance of workmen at the same station for an unduly long period and advised the Bank management to rotate the staff. The evidence on record discloses that there were several employees in the Monghyr Branch having a longer stay than the concerned workmen. These workmen with a longer stay were spared and the concerned workmen were transferred. So the guideline issued by this D.O. letter is of no assistance in support of the transfer of the concerned workmen.

13. It appears that Shri B. K. Bhagat made an enquiry on the complaint of alleged assault on 12-6-84 lodged by Shri C. K. Sinha, Clerk-cum-Cashier of Monghyr Bazar Branch in the Monghyr Branch campus, as advised by the Chief Regional Manager State Bank of India Regional Office, Bhagalpur. Shri Bhagat observed that there was inter trade union rivalry between State Bank of India Staff Association and A.I.B.E.A. to which the sponsoring union is affiliated and recommended that by a way of preventive measure senior members of staff who can be transferred under Bank's extant rules should be transferred immediately from Monghyr Branch to places where they would not be in a position to interfere in Monghyr Branch situation and engineer further tension and rowdiness. The Regional Manager submitted a note on the report of Shri Bhagat. The Regional Manager proposed that S/Shri B. P. Yadav, Ashok Kumar, T. K. Bose and Ganesh Singh were mainly responsible for creating indiscipline and unbecoming atmosphere in Monghyr Branch and, therefore, they should be immediately transferred in different directions, some even to other Regions. This note is dated 14-9-84 (Ext. M-17/1). Presumably, acting on this note the four workmen mentioned in the note were transferred to different directions. But in the process the Bank has violated the norms and principle of transfer as referred to hereinbefore.

14. The sponsoring union has contended that the management has adopted discriminatory attitude in the matter of transfer of staff belonging to the union cited some instance. But the management has produced documents to show that the members of staff belonging to other unions were also transferred (Ext. M-6). Hence, in my view the allegation of discrimination against the members belonging to the sponsoring union has not been squarely proved.

15. It appears from the evidence that the management has taken action against these workmen which includes chargesheet, stoppage of promotion and annual increments. I direct the management to re-consider all these issues as its action in transferring these employees from Monghyr Branch is not found to be justified. Nevertheless, I desist from directing the management to re-transfer these employees back to Monghyr Branch on pragmatic consideration. The management should consider their cases of re-transfer to any of the six branches in Monghyr—Jamalpur Area within Monghyr Municipal/Urban agglomeration area.

16. Accordingly, the following award is rendered—the action of the management of State Bank of India to transfer the concerned workmen outside Monghyr Municipal/urban agglomeration area is not justified. The management is directed to consider their cases of re-transfer to Monghyr Municipal/Urban agglomeration area. I also direct the management to re-consider the issue of chargesheet and also the issues of stoppage of increment and promotion of the con-

cerned workmen in the interest of industrial peace and harmony

In the circumstances of the case, I award no cost.

S. K. MITRA, Presiding Officer

नई दिल्ली, 12 जनवरी, 1993

का. सा. 329 :- औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अधिनियम में केंद्रीय सरकार न्यू इंडिया एंशरन्स कंपनी लि. के प्रबंधकों से संबंधित निरीक्षणों और उनके कर्मचारियों के बीच समुचित में विवादित औद्योगिक विवाद में नेशनल कॉर्ट एंशरन्स कंपनी के प्रबंधकों का प्रकाशित करने के आ केंद्रीय सरकार के 11-1-1993 को प्राप्त हुआ था।

[संख्या एम-17011/5/88-डी-1 (डी)]

डा. के. वेणु गोपालन, डेस्क ऑफिसर

New Delhi, the 12th January, 1993

S.O. 229.—In pursuance of Section 17 of the Industrial Disputes Act 1947 (14 of 1947), the Central Government hereby publishes the Award of the Labour Court, Ernakulam as shown in the Annexure in the Industrial Disputes between the employers in relation to the management of New India Assurance Co. Ltd. and their workmen, which was received by the Central Government on 11-1-1993.

[No. L-17011/5/88-DIB]

V. K. VENUGOPALAN, Desk Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT LABOUR COURT, ERANULAM

(Labour Court, Ernakulam)

(Monday, the 28th day of December, 1992)

PRESENT :

Shri. M. V. Viswanathan, B. Sc., LL. B., Presiding Officer.

Industrial Dispute No. 2 of 1989 (C)

BETWEEN :

The Regional Manager, New India, Assurance Co. Ltd., Kandamkulathil Towers, M. G. Road, Cochin-682011.

AND

The Organising Secretary, General Insurance Employees Union (Southern Zone), A. A. K. Compound, Paluruthy, Ernakulam, Cochin-682 011, Kerala C.

REPRESENTATIONS :

Sri. B. S. Krishnan, Advocate, Ernakulam. ... For Management.

M/s. M. Ramachandran & P. V. Abraham, Advocates, Cochin-17. ... For Union.

AWARD

This reference was made to this Court by the Central Government as per the Order No. L-17011/5/88 D.I.B. dated 3-1-1989. The dispute is between the management of New India Assurance Company Ltd., Kochi and the workman of the above concern. The issue referred for consideration is "whether the action of the management of New India Assurance Company Limited in terminating the services of Miss. T. Suma, Casual Typist employed in Cananore Branch with effect from 22-2-1985 without follow

ing the provisions under section 25(F) of I.D. Act is justified? If not to what retrenchment relief the workman is entitled?"

2. The workman is represented by the Union, General Insurance Employees Union. The union filed a claim statement stating as follows :

Miss T. Suma was employed as a Typist in the Cannanore Branch of the New India Assurance Company. She was appointed on 2-5-1984 and rendered continuous services till 21-2-1985. She had performed her duties diligently, honestly and sincerely. On 21-2-1985, the Branch Manager terminated her services without giving any reasons. She had completed 240 days in service and management did not comply with Section 25F of the I. D. Act or any of the prescription laid down by Chapter V A & V B of the I. D. Act. The employee was not advised to the effect that she is surplus to the requirement. Appointment to the cadre has been made thereafter over looking her superior claims. Hence the union prayed for the reinstatement of the worker with all benefits.

3. The management filed a counter statement contending as follows :

The reference is not maintainable in law and on facts. Miss T. Suma was engaged on adhoc basis as a typist in the Cannanore Branch of the management company from 2-5-1984 to 15-2-1985. Her days of engagement came to a total of only 234 days. She had no continuous service as contemplated under the I. D. Act. Her service was no longer required due to the appointment of regular hand as per the prescribed selection process. So she was discontinued to be engaged. The provisions relating to retrenchment under Chapter V A or V B of the I. D. Act are not attracted in this case. The management is a public sector undertaking. There is prescribed process of selection for filling regular vacancies in the Company. The worker herein is not an appointee under the regular process of selection. Miss. T. Suma had worked purely on temporary adhoc basis and therefore, existed no relationship as to master and the servant between her and the company. She has no right to seek regular employment without following the proper recruitment procedure. Being a Public Sector Undertaking, the Management has laid down recruitment policy which inter alia provides calling applications through the employment exchange giving advertisement in newspaper, followed by written test and interview etc. and deviation from the norms lead to denial of opportunities to the candidates otherwise eligible. She had not continued and vested right of employment in the company. She is not entitled to any reliefs. She has not completed 240 days of service. Hence the management prayed for upholding the action taken by the management as just and proper.

4. The union filed a rejoinder refusing the contentions raised by the management in the counter statement. The union asserted that the worker herein was terminated only on 22-2-1984 and she had completed more than 300 days in service, that she was working as a regular hand and service uninterrupted. Hence reiterated the claim for reinstatement with back wages all other benefits.

5. The point for consideration is :—

"Whether the termination of Miss. T. Suma from the service of the management is justifiable? If not, to what relief she is entitled to?"

6. The evidence in his case consists of the oral testimony of WW1 and Exts. W1 and M1 to M3.

7. The Point : The management New India Assurance Company is a Public Sector Undertaking. WW1, the workman herein has deposed that for getting regular appointment under the Management Company prescribed procedures are to be followed. She has also admitted the fact for getting regular appointment one has to undergo written test and interview. It is an admitted fact that Miss. T. Suma, the worker herein was not a permanent or regular employee of the Management company. On the other hand she was appointed on a temporary basis on daily wages. Ext. M2 statement produced from the side of the management would show that she was appointed as a Casual Typist on daily wages. This statement would also reveal the fact that she was paid her wages only for the days of actual work. The statement would further show that she was not in continuous service. But there was intermittent breaks. According to M2 statement she worked from 2-5-1984 upto 15-2-1985. The amounts paid by way of daily wages have also been shown in this statement. The number of days worked during the period from 2-5-1984 upto and inclusive of 15-2-1985 are clearly stated in Ext. M2 statement. According to this statement she had only worked for a total period of 234 days. She was paid daily wages only for the said 234 days. Ext. M1 series are the receipts issued by the worker herein for receiving her daily wages. These receipts would support the facts stated in Ext. M2 statement. It is further to be noted that Ex. M1 and M2 documents were produced by the management at the instance of the workman. Ext. M1 series of receipts would also reveal the fact that she was paid wages only upto 15-2-1985. Thus Exts. M1 & M2 documents would establish the case of the management that the worker herein had worked 234 days only.

8. The worker would contend that she had completed more than 300 days in service. According to the worker she was in the service of the management from 2-5-1984 till 21-2-1985. But Exts. M-1 and M-2 documents would negate the said case of the worker. There is no acceptable evidence to show that she had actually worked till 21-2-1985. Exts. M1 and M2 documents would show that she had only worked upto 15-2-1985. There is no reason to discard Exts. M1 and M2 documents. The union and the worker herein relied on Ext. W1 certificate issued by the Branch Manager of the Cannanore Branch of the New India Assurance Company. This certificate was issued by the Branch Manager on 22-2-1985. According to W1 certificate the worker herein joined in the service of the Management Company on 4-6-1984. But admittedly the worker herein joined in the service of the management company only on 2-5-1984. This circumstance is sufficient enough to come to a definite conclusion that the facts stated in Ext. W1 certificate are not true or correct. There is no supporting documents available on record to prove Ext. W1 certificate. It is admitted by WW1 that the certificate was issued by the Manager on 22-2-1985. She has also deposed that this certificate was received from the manager for producing the same in the case against the management. It is further to be noted, that the document was produced before this Court only on 13-7-92. So I feel hesitation to rely upon on Ext. W1 certificate. The case of the worker that she worked upto 21-2-1985 cannot be accepted without any supporting documents. She has deposed that the management company paid her wages only after getting the receipts from her. She has also admitted that the Ext. M1 series of vouchers were issued by her for receiving her wages. It is further to be noted that the last voucher is dated 22-2-1985 and that is for her wages till 15-2-1985. So this circumstance would reveal the fact that she had only worked upto 15-2-1985. She further deposed that her daily wages used to be paid after two weeks. She has also admitted that she never signed in the Attendance Register. There is no ground to disbelieve the case of the management that the worker herein had only worked till 15-2-1985. The worker has not produced any documentary evidence or other independent oral evidence to substantiate her case that she worked upto 21-2-1985. The interested testimony of WW1 cannot be accepted to hold that she worked upto 21-2-1985. So the available documentary evidence would support the case of the management that the worker herein had only worked upto 15-2-1985. I have no hesitation to accept the said case of the management. Hence I hold that the workman herein had only worked upto 15-2-1985. If that be so the case of the management that

the worker herein had actually worked only for 234 days has to be accepted. This conclusion is strengthened by Ext. M1 series of vouchers and M2 statement regarding the period worked, actual number of days worked and date of payment and details relating to Miss. T. Suma.

9. The learned counsel for the union relied on the decision in the case of workmen of American Express International Banking Corporation vs. Management of American Express International Banking Corporation, reported in (1985) 4 Supreme Court Cases—71. In the above said case for commuting the days actually worked the paid holidays and Sundays were also included. But it is to be noted, that the said case was one coming under Delhi Shops and Establishments Act, 1954. Under Section 16, 17 and 18 of the said Act the employee is entitled to weekly holidays with wages. Thus in calculating the days actually worked the Honourable Supreme Court included the paid holidays also. The employees in the said case are having paid holidays. But in the present case on my hand the worker is not having any paid holidays or Sundays. But the worker herein is only entitled to get wages for the days actually worked. So the argument of the learned counsel for the union that the intervening Sundays and holidays have also to be added to get actual days worked cannot be accepted. He has also relied on the decision rendered by the Hon'ble Supreme Court of India in the case of Management of Standard Motor Products of India Limited vs. A. Parthasarathy and another. Reported in (1985) 4 Supreme Court cases—78. In the said case also the paid holidays and Sundays were also counted for getting the number of days actually worked. The employees involved in that case were also having said Holidays and Sundays. They were permanent employees entitled to paid Holidays and Sundays. So the Hon'ble Supreme Court has taken into consideration the paid Holidays and Sundays in calculating the number of days actually worked under the employer. So the principle enunciated in the above said two reported cases cannot be made applicable in the present case. The worker herein is not a permanent employee. She is not entitled to get wages on Holidays or Sundays. So this court is of the view that the Holidays and Sundays cannot be included in calculating the number of days actually worked by the worker under the management herein.

10. The learned counsel for the union further relied on the decision rendered by Hon'ble Supreme Court of India in the case of H. D. Singh Vs. Reserve Bank of India and others. Reported in (1985) 4 Supreme Court cases 201. But the facts and circumstance of that case cannot be made applicable in this case. The workman involved in that case was treated as a badli worker and permitted to continue as such for a pretty long time. His name was included in the list prepared by the management. But subsequently his name was removed from the roll for the reason of passing Matriculation examination. In that case, the workman was given work on rotation basis. The Hon'ble Supreme Court condemned the procedures adopted by the Management of Reserve Bank of India. So, in the circumstances of that case the Hon'ble Supreme Court included the Sundays and Holidays while calculating the number of days actually worked. But the facts and circumstance of that case cannot be made applicable in this case. The facts and circumstance of the present case on my hand are entirely different from the above referred reported case. Here the worker was appointed on daily wages on a temporary basis. She was fully aware of the terms of the appointment. She was paid here wages only for the days on which she actually worked. She was not paid any wages on Sundays or Holidays. It is come out in evidence that the worker herein cannot be regularised in service as for regular appointment some prescribed procedures are to be complied with. Thus in all respects, the Sundays or Holidays cannot be included in calculating the number of days actually worked by the workman.

11. The evidence on record would clearly show that the worker herein has not actually worked for not less than 240 days as provided in section 25B (2) (a) (ii) of the I. D. Act. If that be so, the workman herein is not entitled to get any benefit or protection under section 25F of the I. D. Act. Then the termination of the workman herein can only be held as just and proper. The point is answered accordingly.

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12. In the result, an award is passed holding that the termination of Miss. T. Suma from service of the management is justified. She is not entitled to any relief in this case.

M. V. VISWANATHAN, Presiding Officer

Ernakulam,
28-12-1992.

APPENDIX

Witness examined on the side of Workman :

WW1. Smt. Suma.

Exhibits marked on the side of Management :

Ext. M1 series (74 Nos.) Vouchers relating to payment of wages to the workman.

Ext. M2. Statement regarding period of work, actual number of days work, date of payment and details relating to payments to the workman.

Ext. M3. True copy of letter dated 3-5-1990 from the management to Mr. T. Vijayan, Divisional Manager, Cannanore Division Office.

Exhibit marked on the side of Workman :

Ext. W1. Experience Certificate issued to the workman by Branch Manager, New India Assurance Company Ltd., Cannanore.

Presiding Officer.

नई दिल्ली, 12 जनवरी, 1993

का. प्र. 230 -- औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, बैंक आफ बड़ोदा के प्रबन्धन के संवर्द्ध निरीक्षकों और उनके कर्मचारों के बीच, प्रत्यक्ष में निदिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं. 2, बम्बई के संवर्द्ध को प्रकाशित करने हेतु औद्योगिक सरकार को 11-1-1993 को प्राप्त हुआ था।

[संख्या एन--12012/254/88--डी--2 (ए)]

बी. के. वेणु गोपालन, डेस्क अधिकारी

New Delhi, the 12th January, 1993

S.O. 230.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, No. 2 Bombay as shown in the Annexure in the industrial dispute between the employers in relation to the management of Bank of Baroda and their workmen, which was received by the Central Government on 11-1-1993.

[No. L-12012/254/88-D.II (A)]

V. K. VENUGOPALAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, BOMBAY

PRESENT :

Shri P. D. Apshankar, Presiding Officer.

Reference No. CGIT-2/54 of 1988

PARTIES :

Employers in relation to the management of Bank of Baroda

AND

Their workmen.

APPEARANCES :

For the employers—Shri R. B. Pitale, representative.

For the workman—Shri A. P. Kulkarni, Advocate.

INDUSTRY : Banking

STATE : Maharashtra

Bombay, the 28th December, 1992

AWARD

The Central Government by their Order No. L-12012/254/88-D.II (A) dated 30-11-1988 have referred the following industrial dispute to this Tribunal for adjudication under Section 10(1)(d) of the Industrial Disputes Act, 1947.

“Whether the action of the management of Bank of Baroda in relation to its Station road branch, Pune, in terminating the services of Shri Kiran Sonnis, a sub-staff, working in the branch w.e.f. 3-12-1983, is justified? If not, to what relief the workman is entitled?”

2. The case of the said workman as disclosed from the Statement of claim (Ex. 2) filed on his behalf by the General Secretary of the Bank of Baroda Employees' Trade Union Congress in substance is thus :

The said workman Shri Kiran Sonnis was appointed as a Peon in the bank in March 1973. The bank by the letter dated 17-11-1983 terminated his services with effect from 3-12-1983, by offering him retrenchment compensation and one month's notice pay in lieu of notice. His services were terminated by the bank on the ground of the alleged misconduct on the part of the workman by remaining absent unauthorisedly. However no enquiry was conducted by the bank to prove the alleged misconduct. The action of the bank amounted to discharge simpliciter of the workman, and as such, the bank should have issued the necessary chargesheet to the workman should have given an opportunity to him of being heard. In case the alleged misconduct was proved then only the bank should have taken the necessary action against him. In fact the said workman had informed the bank from time to time about the reasons of his absence, and as such, the bank were aware of it. Before drawing the adverse inference that the workman had repudiated the contract of employment, it was necessary for the bank to establish the alleged fact of repudiation of contract of employment. While retrenching the said workman under Section 25-F of Industrial Disputes Act, the bank retained some other workmen junior to the workman in question in service, and as such, the bank committed a breach of the provisions contained under Section 25-G of the Industrial Disputes Act. In the case of absence from duty for a certain number of days it is necessary for the bank management to give an opportunity to the workman to resume duties, and to obtain the proper explanation from him in the matter. However the action taken by the bank management in the present case is against the principles of natural justice.

3. Even assuming that the workman in question had remained absent for a long number of days, the punishment inflicted upon him is too harsh and a discrimination has been caused by the management against him and some similar other workmen who had remained absent for a very large number of days. The bank had not taken into consideration the past service record of 10 years of the workman in question before awarding the punishment of the termination of his services upon him. Some other workmen had remained absent for 371 to 1268 days. Even then the bank did not take the similar action against them, and the action taken by the bank against the workman in question is discriminatory. Therefore the union firstly prayed that this Tribunal should hold the action of the bank management as unjust and illegal and should direct the management to reinstate the said workman in services with full back wages and the continuity of service.

4. The Bank management by their written Statement (Ex. 3) contested the said claim of the union, and in substance contended thus :—

The said workman joined the service in the bank as a peon in March 1973. The workman was in the habit of remaining absent unauthorisedly and remained absent from duty from 22-9-1983 onwards without informing the bank about his absence and without giving any reason for the absence. In case the workman was really sick and was under the medical treatment, he should have submitted the necessary doctor's certificate in the matter in time. However, no medical certificate was received by the bank during the period of absence of that workman. Further, prior to his unauthorised absence from 22-9-1983, he was also absent from duty for 4 days from 31-8-1983 to 3-9-1983. On 5-9-1983 when he resumed for duty he submitted a medical certificate regarding his absence and illness of 4 days, and it was mentioned in that medical certificate that he was physically fit to resume duty from 5-9-1983. As such it cannot be believed that the said workman again got the attack of Malaria, and that too, for a long number of 55 days. As per the Bank's regulations, the bank issued regular notices in the form of Notices 'A', 'B' and 'C' which are issued in the case of long unauthorised absence of the workman, and wherein no communication is received by the bank from the workman concerned. In those notices it was clearly mentioned that by his own behaviour the workman was allowing the bank to presume that the workman had voluntarily abandoned his services. In case the workman wanted to continue in services as an obedient workman, it was for him to communicate to the bank about his absence and to produce the necessary medical certificates regarding his illness, if any.

5. The Bank management further contended thus :

In the past the unauthorised absence of the workman was later on regularised by the bank by giving him leave on Loss of Pay'. He was granted the leave for 168 days on loss of pay of the period from January 1981 to July 1983. He was also away from duty for 52 days from 2-6-1983 to 23-7-1983. As the said workman had not informed the bank management about his inability to resume duty, the bank had sent him a registered notice with acknowledgement due on 17-9-1983 at his registered address, which was returned by the post office with remark "Refused by the addressee return to the Sender". Even thereafter the workman did not inform anything to the bank till 22-1-1984. Therefore the action of the bank in the matter is quite just and proper. This is the case of the abandonment of service by the workman himself who by his own conduct terminated his contract of employment with the bank, and this was not a case of retrenchment by the bank. By remaining absent for a long number of days, the said workman has set a very unhealthy and detrimental example for the other employees of the bank. In case the said workman is reinstated in services, it will set a very unhealthy and detrimental example to the other large number of employees and that would affect the smooth and responsible administration of the bank for the public. The bank management therefore prayed for the rejection of the prayer of the workman.

6. The Issues framed at Ex. 4 are :

- (1) Whether the termination of the service of the workman Shri Kiran Sonnis, without holding any inquiry against him by the bank management, is just, proper, valid and legal?
- (2) Whether the retrenchment of the said workman is in contravention of the provisions contained in Section 25-G of the Industrial Disputes Act?

(3) Whether the action of the Bank management against the said workman is discriminatory, as compared with its action against the other many workmen ?

(4) Whether the action of the management of Bank of Baroda in relation to its Station Road Branch, Pune, in terminating the services of Shri Kiran Sonnis a sub-staff working in the branch w.e.f. 3-12-1983 is justified ?

(5) If not, to what relief the workman is entitled ?

(6) What Award ?

7. My findings on the said Issues are :

(1) Yes

(2) No

(3) No

(4) Yes

(5) Nil

(6) As per Award below.

REASONS

8. The workman Shri Kiran Sonnis examined himself in support of his case, and he was cross-examined on behalf of the bank management. Shri Alwin James, the Manager (Personnel), of the Bank of Baroda, Pune, filed his affidavit Ex. 9 in support of the case of the management, and he was cross-examined on behalf of the workman. The said workman had remained absent without submitting any prior application and without submitting any medical certificate, on the ground of illness from 22-9-1983. According to the bank management, the workman himself had repudiated his contract of employment, and hence the formal order regarding the termination of his service w.e.f. 3-12-1983 was passed by the bank by their letter dated 17-11-1983. Therefore the bank had sent the letter dated 3-10-1983 (Ex. 14) and also a further letter dated 12-10-1983 asking him to resume duty, but as the workman did not resume his duty, it was presumed that he had repudiated his contract of services and hence his services were terminated formally w.e.f. 3-12-1983. In that connection the statements and admissions made by the workman in his cross-examination are very material and support the case of the bank management, as above.

He stated in his cross-examination thus :

He fell ill on 21-9-1983, but he only orally informed the bank about his illness about 10 to 15 days thereafter. He is aware of the fact that the application for leave and the medical certificate regarding the illness are to be submitted to the bank soon after an employee falls sick. However he did not send any medical certificate in respect of his illness. He himself went to the bank by Rikshaw twice and orally informed the branch Manager Shri Dalal about his illness. However he did not file any application in person for leave. Except his oral statement he has got no other evidence in that respect. Now, in case he had really gone to the bank to inform the manager about his illness, he could have submitted the necessary application about it immediately. However he did not submit any application and did not produce any medical certificate. Therefore the workman's statement in his cross-examination that he had gone to the bank in person twice and informed the Branch Manager about his illness, cannot be accepted. According to him, he had sent a post card to the bank management about his illness. However in that respect also except his oral word, there is no other evidence on record.

9. He further stated in his cross-examination thus :

He was informed by the bank by the letter dated 3-10-1983 to resume his duties immediately. However he did not reply to that letter. He then received the further letter from the bank dated 12-10-1983, but he did not reply to that letter also. He then received the third letter dated 17-11-1983

from the bank along with the pay order. However he did not encash that pay order. His services were to be terminated by the letter dated 17-11-1983 w.e.f. 3-12-1983. However he did not send any letter or application to the bank prior to 3-12-1983. After 3-12-1983 he sent the first letter to the bank in the first week of January 1984. It is thus quite clear from the different statements made by the workman that sufficient opportunity was given to the workman to resume his duties, but that he himself did not resume his duties, and as such gave up his services, and the bank only passed a formal order terminating his services w.e.f. 3-12-1983 by their letter dated 17-11-1983.

10. The documentary evidence regarding the absence of the workman and the action taken by the bank management against him clearly which supports the case of the bank management is thus :—

Ex. 14 is the letter 3-10-1983 signed by the manager of the bank to the workman that he had remained absent without any communication from 22-9-1983 and asking him to resume duty immediately and to explain the reason for his absence. Admittedly even though the workman received it, but did not reply to that letter. Thereafter the management sent the further letter dated 12-10-1983 (Ex. 13) to the workman that he had remained absent from 22-9-1983 without any communication and asking him to resume duty within 10 days and to explain about his absence, failing which it would be presumed that he had repudiated his contract of service. This letter also, even though received by the workman, was not replied by him. Therefore the bank management sent the third letter dated 17-11-1983 (Ex. 12) that even though the bank had sent him the letters dated 3-10-1983 and 12-10-1983 he had not reported for duty and did not reply to them and as such by his conduct he had repudiated the contract of employment and by way of abundant precaution the retrenchment compensation and one month's notice pay were sent to him. Thus by the said letter dated 17-11-1983 the bank management passed a formal order terminating the services of the workman as he himself by his conduct had repudiated the contract of service with the bank management. As such, the bank management itself had not discharged him from service nor had it dismissed him from service. After the letter dated 17-11-1983, as above, was sent by the bank management, the workman sent the letter dated 15-12-1984 (Ex. 17) to the bank management. In that letter he stated that he was ill by malaria from 22-9-1983, and as such could not attend for duty, that 3 to 4 days thereafter he had sent a leave application with his younger brother that he reported for duty on 18-11-1983, but that he was not allowed to resume by the bank management, and he finally requested to the bank management to reconsider his case. Now, it may be noted that while the services of the workman were formally terminated w.e.f. 3-12-1983, he sent his letter for the first time on 15-12-1984, i.e. more than a year after his services were terminated by the bank. In case he had really sent any leave application with his younger brother he could have produced a copy of that application before this Tribunal and he could have examined his younger brother. However no copy of that leave application has been produced before the Tribunal, and his younger brother had also not been examined as a witness in this case. Therefore the contents of that letter dated 15-12-1984 (Ex. 17) cannot at all be accepted. The similar letter dated 25-1-1984 (Ex. 15) was sent by the workman to the bank management. In this letter the workman stated that after he fell sick, he had sent a leave application of 19-9-1983 to the bank, but that the management refused to accept it. Now, there is no reason at all for the bank management to refuse any leave application from the workman, as the bank management themselves had sent the letters thereafter asking the workman to resume his duty. Further, the workman did not produce that leave application dated 29-9-1983, which was refused to be accepted by the

bank management, before this Tribunal. Therefore, no reliance can be placed upon the workman's other letter dated 25-1-1984 (Ex. 15). Thereafter the Vice President of the Union raised the industrial dispute before the Assistant Labour Commissioner (Central) Bombay, by the letter dated 23-7-1987 (Ex. 18). It may be noted that while the services of the workman were formally terminated in December, 1983, the union had raised the industrial dispute before the ALC four years thereafter. Therefore the conduct of the workman in this respect is also unnatural.

11. It is seen from the other documentary evidence on record that the previous service record regarding his attendance was highly unsatisfactory. It is seen from the chart (Ex. 21) prepared by the bank management that the workman had availed of 142 days sick leave from February 1981 to September 1983. Further, as per the chart (Ex. 22) he was on leave on loss of pay, i.e. he had unauthorisedly remained absent, for 178 days from September 1981 to July 1983.

12. Ex. 23 is a duplicate certificate dated 31-7-1987 issued by Dr. R. V. Bavdhane stating that the original certificate was issued on 14-11-1983, and that the said workman was suffering from malaria and anaemia from 22-9-1983 to 15-11-1983 for which he was advised rest, and that he was fit for duty from 16-11-1983. Now, admittedly no such original certificate was produced at any time by the workman before the bank management when he had remained absent on the ground of illness from 22-9-1983 till his services were formally terminated w.e.f. 3-12-1983. In case that original certificate was really obtained from the said doctor on 14-11-1983, the workman could have readily and easily produced it before the bank management. The workman's plea that it was torn or lost cannot be accepted. The said doctor has not been examined before this Tribunal to prove that really he had issued the original certificate on 14-11-1983. Therefore no reliance can be placed on the said duplicate copy of that certificate (Ex. 23) dated 31-7-1987 produced for the first time before this Tribunal.

Ex. 25 is the envelope sent by Registered Post-Acknowledgement due by the bank to the said workman and which was returned back by the post with the endorsement, "refused". This envelope contained the 3rd notice dated 17-11-1983 formally terminating the services of the workman. Therefore, the workman had refused to accept that third notice himself. The bank management had treated by the letter dated 17-11-1983 (Ex. 12) that the workman himself had repudiated his contract of employment, as he had remained absent without any communication and without producing any medical certificate from 22-9-1983. It may be noted that the service record of the workman of the period prior to 22-9-1983 was highly unsatisfactory and that the bank management had sent him letters from time to time asking him to resume duty, but that he was not replying to them, and was not resuming his duty accordingly, as can be seen from the following documentary evidence on record. Ex. 35 is a letter dated 5-7-1983 sent by the bank to the workman that he had remained absent without any intimation from 2-6-1983, and directing him to resume his duty immediately. Thereafter the bank sent the other letter dated 15-7-1983 (Ex. 36) that he had remained absent without any intimation, and asking him to join the duty within 10 days, failing which it would be presumed that he had repudiated his contract of service. Ex. 37 is the letter dated 3-5-1983 by the bank that the workman had remained absent without any prior communication from 26-4-1983 and asking him to resume duty immediately. The bank then sent further letter dated 20-5-1983 (Ex. 36) that the workman had remained absent since 26-4-1983 without any communication, and that the workman had sent back a registered envelope and letter dated 3-5-1983 (Ex. 37) which was returned back by the post office with the endorsement, "not claimed". By this letter dated 20-6-1983 (Ex. 38) the workman was asked to resume duty within 10 days. Ex. 39 is the letter dated 25-8-1982 by the bank that the workman had remained absent without any communication from 9-8-1982 and asking him to report for duty immediately. Ex. 40 is the further letter dated 9-9-1982 by the bank in continuation of their earlier letter dated 25-8-1982 that the workman had continued remaining absent and asking him to resume duty within 10 days. The chart (Ex. 41) prepared by the bank shows that from May 1981 to May 1982 the workman had remained absent for 107 days

without prior permission and sufficient reasons. Ex. 43 is a letter dated 21-9-1981 by the bank that the workman had remained absent from 10-9-1981 without any prior communication and asking him to resume duty immediately and to explain the reasons for his unauthorised absence. It is thus quite clear from all the above said different letters sent by the bank to the workman from time to time that he used to remain absent unauthorisedly from time to time without any prior communication and he was not resuming to his duties immediately as directed by the bank management.

13. Ex. 44 is the circular dated 28-9-1978 issued by the General Manager of the bank regarding the action to be taken, step by step, in case a workman remains absent without prior intimation, or oversteps the leave without the necessary sanction, for a period of 10 days or more. As per that circular, when a Registered A.D. letter is to be sent to him to explain for his unauthorised absence and to report for duty (notice in 'A' form to be sent). If the workman does not report for duty or does not submit any explanation, then he is to be sent letter by Registered A.D. asking him to report for duty within 10 days and to explain the reasons failing which it would be treated that he has repudiated the contract of employment (Notice in 'B' form to be sent). If the workman does not report for duty within 10 days or does not send any reply, he is to be informed that by his act he has repudiated the contract of employment, and he is to be sent by abundant precaution, the notice pay and the retrenchment compensation (notice in 'C' form to be sent to him). Thus, the bank management had sent the three notices, as above to the workman as per the circular of the General Manager dated 28-9-1978, before the formal order regarding the termination of his services was passed. As per the provisions contained in Chapter 13 of the Bipartite Settlement dated 19-10-1986, except as regards the casual leave, the employee is to apply in writing well in advance. No leave can be claimed as of right. All sick leave is to be granted only on production of a medical certificate accepted to the bank. In the present case the workman in question had not applied well in advance nor had he produced any medical certificate regarding his illness. Therefore, no medical leave or pay could be granted to him by the bank management, as prayed by the workman long thereafter, and now in the present reference.

14. ISSUE NO. 1 :

Admittedly, no enquiry was held against him before the services of the said workman were terminated by the bank management. According to the workman, the termination of his services by the bank management without holding any enquiry against him, is not just, proper, valid and legal. However, as noted above, the bank management themselves had not terminated his services, but that the workman himself by his conduct had repudiated the contract of service and had given up his services. As such there was no question of holding any enquiry against him before passing a formal order regarding the termination of his services. Further, he was not dismissed from services by way of a punishment, and therefore no enquiry was required to be held before the formal termination of his services. My attention was drawn on behalf of the bank management to the case reported in 1988 LIC page 288 between the Managing Director V/s. Babasaheb Devgonda Patil, of the High Court, Bombay, wherein it was held thus :

"Workman remaining absent from duty without leave for more than 3 years continuously—workman not asking for leave and not caring to explain his absence. He must be said to have abandoned service voluntarily—Removal of his name from Roster—It is mere formality and does not amount to retrenchment—Workman not entitled to reinstatement."

In the said reported case the workman had remained absent for 3 years. In the case of the workman in question, the workman had not remained absent for 3 years but had remained absent for a long period. Even then, the principle laid down in that case will apply to the facts of the present case. In the case reported in 1977 L.J.C. page 602 between Kadam V/s. Dadajee Dhackjee and Company it was held by the High Court, Bombay, thus :

"In cases of misconduct, it is open for the employer either to hold enquiry and dismiss the employee by

way of punishment or discharge him and pay all retrenchment benefits. The employer has a choice to adopt either of the courses, provided action is bona fide. The question of mala fides or acting in colourable exercise of power, cannot arise unless allegations set up are unfounded and imaginary, and the action is motivated by some ulterior purpose;"

In the present case, the workman was not dismissed on the ground of any misconduct, and as such, there was no question of holding any enquiry against him before terminating his services. In the case reported in 1973 1 LLJ page 278 between the workman of Firestone Tyres and Rubber Co. V/s. Management, the Supreme Court of India held that :

"Even if no enquiry has been held by an employer, or if the enquiry held by him is found to be defective, the Tribunal in order to satisfy itself about the legality and validity of the order, has to give an opportunity to the employer and employee to adduce evidence before it. It is open to the employer to adduce evidence for the first time justifying his action; and it is open to the employee to adduce evidence contra."

In the present case the bank management has now duly proved that the workman by his conduct repudiated the contract of employment, and that he used to remain absent without any prior leave and prior application from time to time. Certain cases were referred to on behalf of the workman on the point that the holding of the previous enquiry was necessary before the services of the workman could be terminated. However the facts of those cases do not apply to the facts of the present case, and the case law cited on behalf of the bank management clearly supports the view that no enquiry was and is necessary when the workman himself gives up the services and repudiates the contract of employment with the employer.

Issue No. 1 is therefore found in the affirmative.

15. ISSUE NO. 2 :

According to the workman, while his services were terminated by the bank management, certain workmen junior to him were retained in services, and as such, the bank management committed a breach of the provisions contained in Section 25-G of the Industrial Disputes Act. However, in the present case, the workman was not retrenched from services as such, but that he himself had repudiated the contract of employment with the bank. Therefore, there was no question of committing any breach of the provisions contained in Section 25-G of the Industrial Disputes Act, 1947.

Issue No. 2 is, therefore, found in the negative.

16. ISSUE NO. 3 :

According to the workman, many of the other employees were granted the sick leave by the bank management for a large number of days, and that they were granted the half pay leave, and that by refusing the half pay leave to him, a discriminatory action has been taken by the bank management against him. However it is seen from the evidence on record that those other employees had applied for leave well in advance, and hence they were granted the sick leave on half pay. In the present case, as noted above, the workman in question had never applied for sick leave well in advance, and had not submitted any medical certificate regarding his illness. As such, no sick leave as claimed by the workman, could be granted by the bank to him, and hence no discriminatory action was taken by the bank against him, as compared with their action against the other employees.

Issue No. 3 is therefore found in the negative.

In the present case at the time of passing the formal order of the termination of the services of the workman, he was given one months pay. It was urged on behalf of the workman that he should have been given 3 months' notice or 3 months' pay in lieu of notice, as provided in para 522 of the Shastri Award. Para 522 of that Shastri Award states that for the termination of services in cases not involving disciplinary action for misconduct, three months' notice

or three months wages in lieu of notice should be given to him. However, as noted above, the bank themselves did not terminate the services of the workman, but that the workman by his conduct repudiated the contract of employment and the bank only passed a formal order terminating his services, clearly stating in the order that the workman had repudiated the contract of employment with the bank. Therefore there was no question of complying with the provisions contained in para 522 of the Shastri Award.

17. Therefore, in the result, the action of the bank management in passing only a formal order terminating the services of the said workman w.e.f. 3-12-1983 on the ground that the workman himself had repudiated the contract employment, is quite just, legal and proper.

Issue No. 4, is, therefore, found in the affirmative.

As such, Issue No. 5 is found in the negative.

18. The following Award is, therefore, passed.

ORDER

The action of the bank of Baroda in relation to its Station road branch, in passing the formal order regarding the termination of services of Shri Kiran Sonnis, a substaff, working in the branch, w.e.f. 3-12-1983 on the ground that he himself had repudiated by his conduct the contract of employment with the bank management, is quite just, legal and proper.

The parties to bear their own costs of this reference.

P. D. APSHANKAR, Presiding Officer

नई दिल्ली, 12 जनवरी, 1993

का. प्रा. 231 :--औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, इण्डस्ट्रियल डेवलपमेंट बैंक ऑफ इण्डिया के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण कानपुर के पंचवट की प्रकृति करती है जो केन्द्रीय सरकार को 11-1-1993 को प्राप्त हुआ था।

[संख्या एन--12012/616/86--डी-2 (ए)]

वी. के. वेणुगोपालन, डस्क अधिकारी

New Delhi, the 12th January, 1993

S.O. 231.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Industrial Development Bank of India and their workmen, which was received by the Central Government on 11-1-1993.

[No. L-12012/616/86-D2(A)]

V. K. VENUGOPALAN, Desk Officer

ANNEXURE

BEFORE SRI ARJAN DEV PRESIDING OFFICER
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT PANDU NAGAR, KANPUR

Industrial Dispute No. 118 of 1987

In the matter of dispute between :

Chief Secretary, Reserve Bank 'D' Class Employees
Union, Kanpur.

AND

The General Manager, Industrial Development Bank of
India, The Mall, Kanpur.

AWARD

1. The Central Government, Ministry of Labour, vide its notification no. L-12012/616/86-D. II(A) dt. 24-8-87 has referred the following dispute for adjudication to this Tribunal :—

“Whether the action of Industrial Development Bank of India Kanpur in denying full time employment to Sri Hans Ram Part Time Sweeper is fair and justified ? If not, to what relief the concerned employee is entitled ?”

2. The case of the Union in brief is that the workman was appointed as a part time sweeper on 23-7-79 on daily wage basis in the bank at Kanpur. Subsequently, vide appointment letter dt. 11-10-80, he was offered the post of temporary part time sweeper. He took over charge as temporary part time sweeper on 17-10-80. In terms of the appointment letter, the work of Farrash Mazdoor Peon and such other duties as asked to him by the bank from time to time could also be taken from him. After his appointment, he performed and is still performing all the duties of sweeper, farrash, mazdoor and peon as asked to him by the bank. Weekly duty hours were finally increased from 19 hours to 29 hours. Of late the management of the bank appointed one Sri Santosh Kumar as a part time sweeper without giving him (Sri Hans Ram workman) full time regular appointment. The Union alleges that the workman is a Scheduled Caste candidate and has been working for the last more than 8 years. Denial of opportunity to him as a full time worker amounts to Unfair Labour Practice within the meaning of Item no. 10 of Schedule IV of the I. D. Act, 1947. The Industrial law recognises that even a temporary casual part time employee could be granted an opportunity of to full time appointment on the basis of priority. The Union further alleges that the workman's application dt. 15-2-82 and 30-8-86, for appointment to the post of peon were rejected by the management without any sufficient ground. The Union has, therefore, prayed that full time appointment on priority basis as sweeper peon farrash or mazdoor be granted to the workman and further he should be paid arrears of wages since 1979 at further appointments in class IV Cadre as peon farrash sweeper etc. have been made by the management.

3. The case is contested by the management of the bank. According to the management the reference is bad in law inasmuch as clause 30 of the settlement dt. 10-3-86 entered into between the bank and All India Industrial Development Bank Employees Association and the Industrial Development Bank Workers Union, provides for appointment of part time sweeper. Further in the presence of All India Industrial Development Bank of India Employees Association, R.B.I. D Class Union could not raise the dispute on behalf of the workman. Moreover, the order of reference is not in consequence with the petition filed by the aforesaid Union on behalf of the workman before A.L.C. (C), Kanpur.

4. The management admit workman's appointment as part time sweeper on 23-7-79, issue of appointment letter dt. 11-10-80 and workman's taking over charge as a part time sweeper on 17-10-80 in pursuance of said letter of appointment. According to the management, although under the letter of appointment dt. 11-10-80, the workman was required to attend the duties of Farrash mazdoor peon etc. in exigencies of service, the fact, however, is that he has not in fact worked as Farrash Mazdoor or peon nor he has ever been asked to perform such duties. The management deny the appointment of any other part time sweeper. According to the management the landlord has been providing scavenging service in the premises let out to the bank as part of tenancy arrangement. The bank does not need any additional part time or full time sweeper. In fact there are no vacancy of farrash and sweeper in the office of Kanpur. Lastly, the Management Bank deny that the seniority of the workman as a part time sweeper has never been superseded. The relief claimed by the Union for the workman amounts to creation of a post of full time sweeper which in fact does not exist.

5. In support of their respective cases both sides have led oral as well as documentary evidence. Whereas the

Union has examined the workman, the management have examined Sri Snaderaraman Dy. General Manager of the bank at Lucknow. As per un rebutted statement made by him in his affidavit he had been the manager of the Bank at Kanpur till 1-4-90.

6. First of all, I would like to refer to the unchallenged facts about space of the premises of the bank, duty hours of the workman and wages paid to him deposed to by the management witness in his affidavit. It appears that in October, 1979, the bank office was situated on the second floor of the building at Mahatma Gandhi Marg, Kanpur. The area of bank premises was 2840 sq. ft. duty hours of the workman were 13 hours per week and his wages were 1/3 wages of regular class IV employee. On 28-5-83, with the acquisition of 1300 sq. ft. of additional space on the second floor the total area of the premises became 4140 sq. ft. His duty hours was, therefore, increased from 13 hours to 19 hours per week and his salary was raised to 1/2 of the wages of regular class IV employees. On 1-5-85, on account of the increase in bank's strength, without pay increase in area of the bank premises his duty hours were further increased from 19 hours per week to 29 hours per week and his salary was also enhanced to 3/4th of the wages of regular class IV employees. Subsequently (month and year not mentioned by the management witness in para 6 of his affidavit) an additional area of 3830 sq. ft. for office premises was acquired by the bank on the first floor.

7. The only argument of Sri V. P. Gupta, the authorised representative for the Union is that in view of the acquisition of additional space on first floor almost equal to that on the second floor, the proper course for the management bank should have been where made the workman full time employees. Since he had been working as a part time sweeper since 1979 non working of the workman as a full time employee amounted to Unfair Labour Practice on the part of the management within the meaning of Item No. 10, Schedule IV of the I.D. Act.

8. On the other hand, Sri V. P. Srivastava, authorised representative for the management has argued that there is no force in the arguments of Sri V. P. Gupta. Under clause 30 of the settlement dt. 10-9-80, referred to in the written statement, there is no bar of the appointment of part time employee. This fact has been even admitted by the workman himself in para 5 of his affidavit. He has further submitted that there is no bar against the management of the bank in entering into a contracting of scavenging with the landlord. In this connection he has invited my attention to the facts deposed to by the management witness in para 6 of his affidavit. In the said para the management witness has deposed that sweeping work of the office area and dusting of furnitures is done before and after the office hours so that no disturbance is caused to the other staff by sweeping and dusting during their working hours. In case of increase in the weekly hours of the workman, the workman's services could not have been utilised properly as two workmen would have been simultaneously needed to sweep and dust the floors, furnitures etc., on the first and second floors of the bank's premises after office hours. This fact that sweeping and dusting is done before and after office hours has not been challenged as there has been no cross examination of the management witness on this point from the side of the Union.

9. It has been further argued by Sri Srivastava, for the management that the action of the management in no way amounts to Unfair Labour Practice as has been sought to be shown by Sri Gupta. In this connection he has invited my attention to the facts stated by the management witness in para 10 of his affidavit. The witness has clearly deposed that the appointment of the workman as part time sweeper has been made regular. There is no cross examination of the witness on the point. The witness has further deposed that the workman is neither Badli employee nor Casual employees. Item no. 10 to Schedule V of the I.D. Act, refers to employment of workmen as Badli's, casual's for temporary and to continue them as such for years with the object of depriving them of the status and privilege of permanent workman. According to Sri Srivastava he has already been made regular i.e. permanent on 3/4 wages.

10. After hearing the two sides I find force in the submissions made by Sri Srivastava. Item no. 10 of Schedule V of I.D. Act has no application to the facts of the present case. Further the bank is not debarred in the light of the facts stated by the management witness in his affidavit from entering into a contract of scavenging with the landlord. After all the bank has to see that the work of sweeping and dusting is finished before office hours so that the efficiency of the working staff is not impaired in any way.

11. I may also state that it is not the job of the Tribunal to interfere in the managerial function of the bank. It is for the management of the bank to see how best they can run the administration of the bank i.e. to say to create a full time post of Sweeper or not.

12. In para 11 of his affidavit the workman has deposed that the management of the bank appointed S/Sri B. N. Mishra, Ram Adhar and Chhotey Lal as peons in 1980, 1982 and 1984 respectively. The fact seems to have been stated on the ground that his applications for appointment as peon were rejected by the bank without any sufficient grounds. In reply the management witness in para 15 of his affidavit has deposed that Sri B. N. Mishra was appointed as temporary peon w.e.f. April 16, 1980 i.e. well before workman's appointment on regular part time sweeper on 17-10-80. Moreover, Sri Mishra is an Ex-service man. As regards Sri Ram Adhar, the management witness has deposed that he was appointed as a temporary peon on 22-7-82, he is also an Ex-service man and scheduled caste. About Sri Chhotey Lal, the management witness has deposed that he had been working as a part time Farrash in the Reserve Bank of India, Bombay w.e.f. 16-7-73 and was appointed as temporary full time farrash in I.D.B.I. Bombay from 2-5-75. After completing the minimum required service of 5 years as full time employee in Non Peon Class IV cadre, he was made a peon on 15-11-80, and was promoted as Daftari on 1-12-82. There has been no cross examination of the witness on the above facts. Moreover, there is nothing from the side of the Union to show that the workman possess qualification prescribed for the post of peon. In this connection I would like to refer to Ext. M-1 which is the copy of staff circular no. 20 dated 15-10-86 copy of it has also been filed by the management witness with his affidavit. According to this staff circular the bank decided to allow its offices to fill up 25% of the vacancies occurring in peon cadre by giving switch over to Full Time Class IV in non peon cadre viz. peon-cum-Farrashes, Tea Boys Farrashes Sweepers who have put in 5 years of service as have been found suitable in the interview to be held for the post. Even according to this circular, the workman does not satisfy its requirement. He has not worked as a full time Sweeper for five years. Therefore, in this plea of the Union I find no force.

13. The management have raised the plea that the reference order is bad in law as Reserve Bank 'D' Class Employees Association was not competent to raise the dispute on behalf of the workman because of the existence of I.D. B.I. Employees Association. It is not necessary that the dispute on behalf of the workman could have been raised only by I.D.B.I. Employees Association. It could have been raised by any Trade Union of the Banking Industry to which the workman is a member. Therefore, I do not find any force in this plea.

14. Hence, held that the action of the I.D.B.I. Kanpur, in not giving full time appointment to Sri Hans Ram, Part Time Sweeper is neither unfair nor unjustified. Consequently, the workman is entitled to no relief.

15. Reference is answered accordingly.

ARJAN DEV, Presiding Officer

नई दिल्ली, 11 जनवरी, 1991

का. प्र. 232. -- औद्योगिक विवाद अधिनियम, 1947 (1947 का 11) की धारा 17 के अनुसरण में केन्द्रीय सरकार, अलहाबाद बैंक के श्रमिकों के संबंधित नियोजकों और उनके कर्मचारियों के बीच अनुबंध में

निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, अलहाबाद के सम्मुख प्रकाशित करती है जो केन्द्रीय सरकार का 11-1-1993 का प्राप्ति हुआ था।

[संख्या एल-12012/104/86-डी-2 (ए)]

वा. के. वेणुगोपालन, डेस्क अधिकारी

New Delhi, the 12th January, 1993

S.O. 232.---In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Allahabad Bank and their workmen, which was received by the Central Government on 11-1-1993.

[No. L-12012/104/86-D2(A)]

V. K. VENUGOPALAN, Desk Officer

ANNEXURE

BEFORE SRI ARJAN DEV PRESIDING OFFICER
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-
CUM LABOUR COURT, PANDU NAGAR, KANPUR

Industrial Dispute No. 12 of 1987

In the matter of dispute between :

Sri Inder Bahadur Singh, C/o Dr. P. C. Bajpayee C/o
Allahabad Bank Swaroop Nagar, Kanpur.

AND

The Assistant Regional Manager, Allahabad Bank,
Regional Office, 113/58 Swaroop Nagar, Kanpur.

Appearance :

Sri M. K. Verma, for the Management.

AWARD

1. The Central Government, Ministry of Labour, vide its notification no. L-12012/104/86-D:II(A) dt. 19-1-1987 has referred the following dispute for adjudication to this Tribunal :—

"Whether the action of the management of Allahabad Bank in terminating the services of Sri Inder Bahadur Singh, peon-cum-Farrash Chakery Branch w.e.f. 26-5-83, is justified? If not, to what relief is the concerned workman entitled?"

2. The workman's case in brief is that the Bank adopted a policy of appointing temporary/daily rated employees for doing the work of regular nature against permanent vacancy with a view to avoid regularisation of such employees and giving them the benefits of the modified Sastri Award and Bipartite Settlement. In pursuance of the said policy, he was also appointed on 9-5-81, and after a serving for 247 days inclusive of Sundays and Holidays, he was retrenched on 26-5-83 illegally and without any justification. During this period he had worked at Vijay Nagar, Govind Nagar, Bai Putwa and Chakeri Branches of the bank at Kanpur. For the said period of 247 days he was only paid for 205 days. He was not paid for Sundays and Holidays. According to him he was not the junior most at the time of his retrenchment. Moreover, after termination of his services new hands were appointed without giving him any opportunity of appointment. Thus the bank violated the provisions of secs 25F, 25G, 25H and 25J of the I.D. Act, secs 9 and 19 of U. P. Shops & Commercial Establishment Act, paras 493, 495, 507, 516, 519, 522 and 524 of the Sashtry Award and read with paras 20.7 and 20.8 of the Bipartite Settlement and the Articles 14, 16 and 21 of the Constitution of India. The workman, has, therefore, prayed that after declaring the order of his termination as illegal he be reinstated with retrospective effect with full back-wages.

3. In defence the management pleaded that the workman was engaged for certain fixed periods by the management from time to time as shown in the statement annexed to the written statement, to perform the extra nature of work in exigencies. The management deny the unfair labour practice on their part as alleged by the workman. Recruitment of Sub-Staff/Award Staff is conducted by the bank as per guide lines issued by the Government of India which provide that recruitment should be made from amongst candidates whose names are sponsored by the Employment Exchange on the basis of written test and interview. The petitioner never worked in regular vacancy. The management admit that he had worked at 4 branches of the bank at Kanpur as alleged by the workman for total period of 200 days. The management deny violation of any provisions of I.D. Act, any para of Sashtry Award and any provisions of Constitution of India. Lastly, the management had raised the plea that the reference order is bad in law.

4. In support of his case, the workman has led oral as well as documentary evidence. On the other hand in support of their case, the management have examined Sri Ganga Vishnu Dwivedi, an officer of the bank.

5. It has been admitted by the workman in para 2 of his statement in cross-examination that he had worked for 77 days, 72 days, 39 days and 17 days at Vijay Nagar, Govind Nagar, Rai Purwa and Chakeri Branches of the bank at Kanpur. The total number of working days comes to 205 days, during the period 9-5-81 to 26-5-83.

6. The main point to consider is as to for how many days he had worked during the period of 12 months preceding the date of his termination of services by the management. Details in this regard are found given in unadmitted document no. 4 in the list on document dt. 2-9-87 filed by the then authorised representative Sri V. N. Sekhari, on his behalf. The statement shows that he had worked at Vijay Nagar Branch for 12 days only, from 21-6-82 to 26-6-82 and 28-7-82 to 3-7-82, at Raipurwa Branch for 39 days, 13-12-82 to 31-12-82 (8 days), 1-1-83 to 8-1-83, 16-2-83 to 28-2-83 (11 days) 1-3-83 to 3-3-83, 4-4-83 to 8-4-83 (5 days) and 19-5-83 to 26-5-83. The number of working days comes to 68 days only. If weekly offs are also taken into consideration, the number of working days would come to not more than 75 days in any case.

7. Having worked for 75 days only during the period of 12 months preceding the date of termination of his services, the question of application of sec. 25F I.D. Act does not arise.

8. As has been held by me in I.D. No. 94 of 1986, Sri Mani Ram Versus Central Bank of India, section 25G read with Rule 77 and Sec. 25H read with Rule 78 of the I.D. Central Rules, 1957, would have also no application.

9. Even otherwise there is no evidence worth consideration from the side of the workman to show that he was not the junior most at the time of termination of his services nor there is any evidence from his side that fresh appointments were made after termination of his services. In this connection, I would like to refer to workman's own document filed with list dated 2-9-87, which document has not been admitted by the management. They will be treated as forming part of workman's pleading. Document no. 1 is said to be the copy of petition moved before ALC(C) Kanpur. In it he has not named any junior person nor has named any person who was appointed after termination of his services. So is the case with the claim statement and the affidavit. On the other hand in his affidavit, the management witness has deposed in para 5 of his affidavit that no temporary engagement was made at the branches opened after May, 1983. There has been no cross-examination of the management witness on this point.

10. In this case the workman did not appear to argue his case despite issue of notice. I fail to understand how his retrenchment had been in violation of any provisions of Sashtry Award read with paras 20.7 and 20.8 of the Bipartite Settlement, and any provisions of the Constitution of India.

11. Hence I find that the workman has no case at all. It cannot be held that the action of the management of Allaha-bad Bank in terminating the services of the workman was either illegal or unjustified.

12. Reference is answered accordingly.

Sd/-
ARJAN DEV, Presiding Officer

नई दिल्ली, 12 जनवरी, 1993

का. आ. 233.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुवर्ण में, केन्द्रीय सरकार औद्योगिक बैंक ऑफ कॉमर्स के प्रबन्धन के संबंध निवोजकों और उनके कार्यकारों के बीच भ्रूष में निश्चित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण कानपुर के पंचपट का प्रकाशित करना है, जो केन्द्रीय सरकार को 11-1-1983 को प्राप्त हुआ था।

[संख्या एल-12012/95/86-ई-IV(ए)]

बी. के. वेणुगोपालन, डेस्क अधिकारी

New Delhi, the 12th January, 1993

S.O. 233.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Oriental Bank of Commerce and their workmen which was received by the Central Government on 11-1-1993.

[No. L-12012/95/86-D.IV(A)]

V. K. VENUGOPALAN, Desk Officer

ANNEXURE

BEFORE SRI ARJAN DEV PRESIDING OFFICER
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, PANDU NAGAR, KANPUR

Industrial Dispute No. 3 of 1988

In the matter of dispute between :

1. Sri Nanku Lal s/o Sri Bhola
Village Saraiya Rah, P.O. Boaderia
District Sitapur.
2. Sri Shankar Lal Khandelwal C/o Sri V. K. Gupta
2/363 Namnair Agra.
3. S/Sri Sushil Kumar & Surya Mohan Srivastava
C/o Dr. P. C. Bajpai, 128/111 H Kidwai Nagar,
Kanpur.
4. Sri Sanjay Nayar C/o Sri V. N. Sekhari
26/104 Birhara Road, Kanpur.

AND

1. The Assistant General Manager
Oriental Bank of Commerce
C/43/28/1 Nawal Kishore Road,
Lucknow.
2. Regional Manager
Oriental Bank of Commerce
Regional Office, Lucknow.
3. Manager,
Oriental Bank of Commerce,
Mall Road, Kanpur.

AWARD

1. The Central Government, Ministry of Labour, New Delhi, vide its notification number L-12012/95/86-D.IV(A)

dated 6th January, 1988, has referred the following dispute for adjudication to this Tribunal :—

Whether the action of the management of Oriental Bank of Commerce in terminating the services of Mohan Srivastava, Sanjay Nayar and Sri Shanker Khandelwal and not considering them for further employment while recruiting fresh hands under Section 25H of the I.D. Act is justified? If not, to what relief the workmen concerned are entitled?

2. All the five workmen have filed separate claim statements. Workmen other than Sri Shanker Khandelwal have raised common pleas in their statements of claims. They have alleged that in order to deprive the workmen from the benefits of modified Sastry Award and Bipartite Settlements and regularisation of services, the bank started a practice of appointing temporary employees for doing the work of regular/permanent nature for a period not exceeding 90 days in terms of bank's Head Office instructions to its various branches.

3. Sri Sanjay Nayar has alleged that he was appointed as a clerk on 19-2-1983 at bank's Mall Road Branch at Kanpur, and he worked as such for 85 days upto 31-7-1983, whereafter his services were terminated.

4. Sri Nanku Lal has alleged that he was appointed as a peon at Bank's Sitapur Branch on 27-8-84 and he worked as such up to 29-2-85, after which his services were terminated/discontinued.

5. Sri Sushil Kumar Shukla, has alleged that he was appointed as a clerk on 20-2-81 at Bank's Mall Road Kanpur Branch and his services were terminated on 22-5-81, after he had worked for 89 days.

6. Lastly, Sri Surya Mohan Srivastava, has alleged that he was also appointed as a clerk on 16-7-83, at bank's Mall Road Branch, Kanpur, and he worked as such upto 15-12-83, whereafter, his services were terminated.

7. All of them have further alleged that their services were terminated in violation of the provisions of Sections 25G, 25H and 25J, read with rules 77 and 78 of I.D. Central Rules, 1957, articles 14-16, and 21 of the Constitution of India, paras 493, 495, 507, 516, 519 and 522 of the Sastry Award read with paras 20.7 and 20.8 of the First Bipartite Settlement. They have, therefore, prayed for their reinstatement with full back wages and all consequential benefits with retrospective effect.

8. Workman Sri Shanker Khandelwal, has alleged that he was appointed as a peon against a regular and permanent vacancy on 7-9-81, and he worked as such till 23-12-81, whereafter, his services were terminated without any notice or notice pay. According to him he was paid salary for 89 days in his name and for the rest period in the name of his brother. After his termination the bank appointed another person in whom the bank was interested. He alleged that the order of termination of his services is illegal and it amounts to an Unfair Labour Practice. Like the four remaining workmen he too has prayed for his reinstatement with retrospective effect with full back wages and all other legal benefits.

9. The management too have filed separate written statements in respect of each workman. The management have set up the main defence that these workmen were engaged for very short periods either in the leave vacancy arrangement or for temporary increase of work in the bank as temporary hands. Regular employment in the bank is made through Employment Exchange in the subordinate cadre as per Government Guide Lines. About Sri Nanku Lal, the management plead that he had worked with breaks between August, 1984 and February, 1985, on dates specified in para 7 of the written statement concerning him; Sri Surya Mohan Srivastava, had worked for 85 days with breaks between July 1983 and December 1983 Sri Sushil Kumar Shukla had worked for 86 days with breaks between February 81 and May 81; Sri Sanjay Nayar had worked for

85 days with breaks between 19-2-83 and 12-7-83 and Sri Shanker Khandelwal had worked for 89 days between 7-9-81 and 10-12-81. The management deny any Unfair Labour Practice on their part. The management also deny violation of any provisions of Industrial Disputes Act, 1947, Sastry Award, Bipartite Settlements and Constitution of India.

10. In support of their case Sri Surya Mohan Srivastava, Sushil Kumar Shukla and Nanku Lal have filed their affidavits, but did not examine themselves despite giving of several opportunities. The other two workmen did not file any affidavit evidence. From the orders dt. 30-6-92, passed on the application for amendment of the claim statement and order dt. 4-12-92, it will appear that the workmen who had filed affidavits have been simply interested in delaying the proceedings of the case. Further the order sheet will show that the other two workmen are not at all interested in the case. No evidence worth consideration had come from the side of the workmen. Sri J. Buther the authorised representative for the management too submitted on the last date i.e. 4-12-92 that the management had not to lead any evidence in defence.

11. Thus there is absolutely no evidence from the side of the workmen that the management were guilty of Unfair Labour Practice or the management violated any provisions of Industrial Disputes Act, 1947 and Industrial Disputes (Central) Rules, 1957, any provisions of Constitution of India or any provisions of Bipartite Settlement and Sastry Award.

12. One thing is clear even from the claim statement that the appointments were for 90 days or less than 90 days. None of the workmen claim to have worked continuously for one year within the meaning of section 25-B of the Industrial Disputes Act, 1947. In view of it section 25B of the Act, read with Rule 77 and section 25H read with rule 78 of the Act and I.D. (Central) Rules would not apply in their case. The point where the workman had worked for less than 240 days in a year preceding the date of their termination was considered by me I.D. No. 94 of 1986, Sri Mani Ram Versus Central Bank of India, and after considering the various provisions of I.D. Act, Constitution of India, Sastry Award and various rulings I find no force in the pleas raised in this case by the workmen. There are no grounds for me to differ with my said view.

13. Hence, I find that the action of the management in terminating the services of these workmen cannot be held as unjustified or illegal. They have, therefore, no case at all.

14. Held. that the action of the management of Oriental Bank of Commerce in terminating the services of these five workmen and not considering them for further employment is neither illegal nor unjustified. Consequently, these workmen are entitled to no relief.

15. Reference is answered accordingly.

ARJAN DEV, Presiding Officer

नई दिल्ली, 12 जनवरी, 1993

का. घा. 234 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अन्तर्गण में केन्द्रीय सरकार, न्यून बैंक और इण्डिया के प्रबंधन के संबंध में नियोजकों और उनके कार्यकारी के बीच अंतर्गत में निविष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकरण कायपुर के पक्षों को प्रकाशित करती है जो केन्द्रीय सरकार को 11-1-1993 को प्राप्त हुआ था।

[संख्या एस-12012/246/92-प्रार्थी धार बी-II]

बी. के. वेणुगोपालन, ईस्क अधिकारी

New Delhi, the 12th January, 1993

S.O. 234.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government

Industrial Tribunal, Kanpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of New Bank of India and their workmen, which was received by the Central Government on 11-1-1993.

No. 12012/246/92-IR(B-1)]

V. K. VENUGOPALAN, Desk Officer

ANNEXURE

BEFORE SRI ARJAN DEV PRESIDING OFFICER,
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, PANDU NAGAR, KANPUR

Industrial Dispute No. 128 of 1992

In the matter of dispute between:

Sri Subhash Kumar Tejpal,
Flat No. 50 Ground Floor,
Sanjay Gandhi Nagar,
Varanasi (Cantt.)

AND

The Assistant General Manager,
New Bank of India,
94 M.G. Marg,
Lucknow.

AWARD

1. The Central Government, Ministry of Labour, vide its notification No. L-12012/246/92-I.R.B-2 dt. 12-10-92, has referred the following dispute for adjudication to this Tribunal:—

Whether the action of the management of New Bank of India, Varanasi, in imposing punishment of stoppage of one increment without cumulative effect on Sri S. K. Tejpal Clerk-cum-Godown Keeper vide order dt. 4-10-89, was just and legal? If not what relief is the workman entitled to?

2. In this case notices for filing claim statement were sent to the workman twice but neither he appeared nor he filed any claim statement. It therefore appears to me that the workman is not interested in the prosecution of the case.

2. Even otherwise the reference appears to be not maintainable. The reference refers to the vires of the action of the management in imposing the punishment of stoppage of one increment with cumulative effect on the workman. It also appears from the reference order that the petition raising the dispute was filed by the workman himself, before A.L.C.(C). This being not the case of discharge, dismissal or termination as contemplated by sec. 2-A of the I.D. Act, 1947, such a dispute could not have been raised in an individual capacity by the workman. It could come up only through a registered Union of which the workman was a member. This aspect ought to have been seen by the Desk Officer, Ministry of Labour, New Delhi, while making the reference order. Thus the reference is bad in law.

3. Accordingly not only the reference is answered against the workman on account of non-prosecution but it also held that the reference order is bad in law.

ARJAN DEV, Presiding Officer

नई दिल्ली, 12 जनवरी, 1993

का. अ. 235 :- औद्योगिक विवाद अधिनियम, 1947 (1917 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उक्त अधिनियम की धारा 33 क के अंतर्गत भारतीय स्टेट बैंक के प्रबंधन के विरुद्ध स्टेट बैंक ऑफ इण्डिया एम्प्लोईज यूनियन (बिहार स्टेट) द्वारा दायर एक प्रार्थना पत्र के संज्ञ में अनुबंध में निविष्ट केन्द्रीय सरकार औद्योगिक विवाद नं. 1 प्रवाद के संज्ञ में प्रकाशित करती है जो कि केन्द्रीय सरकार को दिनांक 11-1-93 में प्राप्त हुआ था।

[संख्या एल-12015/1/93 आई. आर. (के-1)]

एस. के. जैन, डेस्क अधिकारी

New Delhi, the 12th January, 1993

S.O. 235.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, No. 1, Dhanbad as shown in the Annexure in respect of a complaint u/s 33A of the said Act filed by State Bank of India Employees' Union (Bihar State) against the management of State Bank of India which was received by the Central Government on 11th January, 1993.

[No. L-12015/1/93-IR(B-I)]

S. K. JAIN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL NO. 1, DHANBAD

(In the matter of a complaint under section 33-A of the Industrial Disputes Act, 1947, arising out of Reference No. 13 of 1985)

Complaint No. 1 of 1992

PARTIES:

State Bank of India Employees Union
(Bihar State) ... Complainant

Vs.

1. The Chief General Manager,
State Bank of India, Local Head Office,
Judges' Court Road, Patna.
2. The Personnel Manager,
State Bank of India, Local Head Office,
Judges' Court Road, Patna.
3. The Deputy General Manager,
State Bank of India, Zonal Office,
Bhowesh Bhawan, Beatson Road,
Khanjarpur, Bhagalpur.
4. The Regional Manager,
Region-I, State Bank of India,
Zonal Office, Bhowesh Bhawan,
Beatson Road, Khanjarpur,
Bhagalpur.
5. The Branch Manager,
State Bank of India,
A.D.B. Lakhisarai Branch, 2
Munger.
6. The Branch Manager,
State Bank of India,
Sultanganj Branch,
Bhagalpur.

... Opp. Parties.

PRESENT:

Shri S. K. Mitra, Presiding Officer.

APPEARANCES:

For the Complainant—Shri G. K. Verma, General Secretary, State Bank of India Employees' Union (Bihar State).

For the Opp. Parties—Shri A. S. Prasad, Asstt. Law Officer, and Shri A. P. Mukherjee, Br. Manager.

STATE: Bihar.

INDUSTRY: Banking.

Dated, the 29th December, 1992

AWARD

The State Bank of India Employees Union (Bihar State) has submitted this present Complaint under section 33 of the Industrial Disputes Act, 1947, impleading the Chief General Manager, State Bank of India, Local Head Office, Judges' Court Road, Patna and 5 others as Opp. Parties.

2. The Complainant has disclosed in its petition that the appropriate Government was pleased to refer the following

dispute to this Tribunal for adjudication being Reference No. 15 of 1985 on the following terms:

"Whether the action of the management of State Bank of India to transfer the three under mentioned workmen from Monghyr Branch to the branches shown against their names is justified

- (i) Smt Ashok Kumar, Clerk, transferred to Colgong Branch.
- (ii) Smt T. K. Bose, Clerk, transferred to Banka Branch.
- (iii) Smt Bindeshwari Prasad Yadav, Head Clerk, transferred to Sheikhpura Branch. If not, to what relief the workmen are entitled?"

The order for the above transfers were made on 24th November, 1984. Sensing that the dispute was about to be referred for adjudication by the Government, the management changed the places of transfer of the aforesaid employees to A.D.B. Lakshisarai Branch, Sultanganj Branch and Asarganj Branch respectively. The management unsuccessfully challenged the reference itself before the single and Division Benches of the Hon'ble Patna High Court and later in the Supreme Court of India. In the meantime, the management succeeded in obtaining ex-parte interim stay order against hearing of the reference case from the Hon'ble Patna High Court. The Opp. Parties ignored the pendency of the proceeding in respect of the industrial dispute before this Tribunal and issued chargesheets to all the three concerned workmen alleging acts of both gross and minor misconducts directly concerning the subject matter of the reference case without obtaining express permission of this Tribunal before which the proceeding was pending for adjudication. The charge sheets were issued by the opposite Party No. 4, Regional Manager, Region-I, State Bank of India, Zonal Office, Bhagalpur, without obtaining the prior permission of the Tribunal in writing despite the fact that he was asked by the Employees Union on 17th June, 1987 to obtain express permission of the Tribunal in terms

Section 33(1)(b) of the Industrial Disputes Act, 1947. Later on when the Bank withheld promotion of the workmen at serial No. 1 and 2 in the order of reference, Ashok Kumar and T. K. Bose, the Complainants wrote to the Chief General Manager on 20th February, 1989 regarding violation of Section 33 but in vain. The management neither proceeded to complete the procedure of disciplinary proceeding against these two concerned workmen after issuance of chargesheet nor advised them any reason for the same. Ashok Kumar, being senior, was allowed to officiate as an Officer (JAG) Scale J) prior to the issuance of the chargesheet and after the issue of the chargesheet he was superseded and juniors were allowed to officiate as officer at A.D.B. Lakshisarai Branch. The Branch Manager of A.D.B. Lakshisarai Branch did nothing except informing the workman that his representation was sent to the Controlling Authority. The workman wrote to the Branch Manager and Regional Manager several times against their mala fide action of superseding him by juniors on account of the issue of the chargesheet in violation of Sec. 33 of the Act. The Regional Manager, Region-I, State Bank of India Bhagalpur Regional Office informed the Branch Manager, A.D.B. Lakshisarai that in view of the pending disciplinary proceeding, Ashok Kumar was not eligible for promotion/officiating in out-of-cadre higher posts or in-cadre allowance carrying posts. Ashok Kumar passed the written examination for promotion to Junior Management Grade in 1986 and was called for interview in which he fared very well. But because of the vindictive attitude of the management his candidature was treated as provisional and eventually he was not promoted because of chargesheet on the subject-matter of the reference. T. K. Bose, another concerned workman also passed written test for promotion to Junior Management Grade but he was also not promoted after interviews because of his candidature having been treated as provisional by the management for reasons similar to that in the case of Ashok Kumar. Although the chargesheets were issued on 7-7-87, the management vindictively considered the candidature of the aforesaid workmen provisional on account of disciplinary proceeding being contemplated against them as decided by the Personnel Manager at the Local Head Office of the management. The disciplinary proceedings related to the charge against the period of unauthorised absence as well as non-acceptance of the order of transfer to the branches mentioned in the order of

reference concerning subject-matter of the industrial dispute. The management themselves conceded the transfer of the concerned workmen to Colgong, Banka and Sheikhpura Branches were unjustified and later changed the branches of posting, though this posting too was irregular. The management treated the absence of the workmen unjustified as unauthorised absence for 527 days and altered the service conditions of the workmen to their prejudice and made junior employees senior to them. The management did not allow T. K. Bose to appear at the Trainee Officer's Examination although he was eligible for the same on account of the chargesheet issued against him. The representation of T. K. Bose with regard to his supersession was not considered by the management. The Bank's Debarment Policy was not applicable in the case of the concerned workmen, but the management withheld promotion on the ground of the Debarment Policy even though according to the Debarment Policy, the bar for promotion in any case operated for a period of three years from the date the employee was served with a chargesheet. The Branch Manager of Sultanganj informed Shri Bose that under the instructions of Controlling Authority, he was not to be allowed to officiate in both out-cadre/in-cadre higher posts. Both Ashok Kumar and T. K. Bose represented to the management for allowing them to officiate or to be promoted on higher in-cadre/out-cadre posts in view of the fact that they had completed three years Debarment period as well. The management, however, continued to debar them from officiating/promotional chances. The Regional Manager, Bhagalpur Region-V wrote to the Personnel Manager, Patna, seeking instructions to allow all the three concerned workmen, i.e. Ashok Kumar, T. K. Bose and Bindeshwari Prasad Yadav, named in the order of reference, to officiate on higher posts (out-cadre/in-cadre) as the period of debarment had already elapsed. But the Local Head Office did not move and the concerned workmen continued to suffer. At no point of time the concerned workmen were placed under suspension by the management. During the pendency of the reference case the concerned workmen were also deprived of two annual increments in their respective pay scales fallen due after their mala fide and vindictive transfer out of Monghyr Branch in November, 1984. The aforesaid alterations with regard to promotion chances and annual increments in pay scales have the effect of making a change in the conditions of service applicable to the concerned workmen prejudicial to their interests. The punishments of denial of promotion and withholding of annual increments, without of course a proved misconduct, are mala fide acts of the management. Besides these acts have been done by the management without obtaining express permission in writing of this Tribunal. The management has consciously contravened the provisions of Sec. 33 of the Industrial Disputes Act and the management has made themselves liable for punishment/penalty under Section 33(1) of the I.D. Act.

3. The Opp. Parties have contested the matter. In their reply they have stated that the statements made by the Complainants in paras 1, 2, 4, 28 and 29 are matters of record. The Opp. Party has denied the allegations made in para 3 of the petition of complaint. With regard to the question of issuance of chargesheet/non-promotion/debarment from officiating opportunity/holding of candidature as provisional/non-allowing to appear at the test for promotion, as provisional non-allowing to appear at the test for promotion, as alleged by the complainants, the management has stated that there is no prohibition against issuing of chargesheet and of the industrial dispute and on such there is no violation of Sec. 33 of the Industrial Disputes Act as alleged and in that view of the matter the subsequent non-promotion as above of the employees concerned on account of existence of valid charge against the concerned employees and consequently the Bank's rule of debarment policy is not bad and illegal. Due to pendency of the writ case bearing CIVC No. 1364/90 it was not legally possible and appropriate for the management to give the concerned workmen promotion, officiating opportunity etc. even after rigour period of 3 years was over as per debarment policy since the date of issuance of chargesheet. Even after disposal of the aforesaid writ case situation has remained the same until the disposal of the case by this Tribunal as per order of the Court dated 24-1-92. In this view of the matter, it is clear that the Bank has acted bona fide and in accordance with law.

In terms of the order dated 25-1-88 passed by the High Court in CWIC No. 2979 of 86 wherein an undertaking was given by the Bank not to proceed further with the chargesheet it was not legally possible, competent or appropriate for the bank to continue further with the departmental enquiry including suspension till final disposal of the writ case. The writ case has been disposed of after admission of SLP before Hon'ble Supreme Court and even after the order of Supreme Court dated 25-3-91 the situation has remained the same until the disposal of this reference case by the Tribunal. The Bank has never conceded that the first transfer was unjustified. The management changed the first transfer on the request of the workman concerned. The Bank's decision to treat the concerned workman as unauthorised absentee for the period of 527 days was due to the workmen's own conduct by remaining unauthorisedly absent and not joining their duties as per lawful order passed by the Bank. The bank management has acted bonafide as per service rules and in that view of the matter the bonafide act of the management cannot be deemed in law as an act of altering of service conditions of the employees concerned. The increments were withheld because of the workmen's unauthorised absence as per service rules.

4. The Complainant has examined three witnesses, namely, WW-1 Ashok Kumar, WW-2 T. K. Bose and WW-3 B. P. Yadav and laid in evidence a number of documents which have been marked Exts. W-1 to W-20.

On the other hand, the Opp. Parties have examined only one witness, namely, MW-1 A. K. Mukherjee and laid in evidence some documents which have been marked Exts. M-1 to M-9.

5. Admittedly, the Bank transferred the three concerned workmen from Monghyr Branch to three different branches of the Bank. Ashok Kumar was transferred to Colgong Branch, T. K. Bose to Banka Branch and B. P. Yadav to Sheikhpura Branch. The Employees Union and the concerned workmen considered this transfer illegal in view of the norms of transfer policy as laid down in the Sastry Award and circulars of the Bank. The Employees union raised an industrial dispute over this transfer order before the A. L. C. (C), Patna. But before the appropriate Government referred the dispute for adjudication the management changed the place of transfer of the aforesaid employees. Ashok Kumar was transferred to A. D. B. Lakhisarai, T. K. Bose to Sultan-ganj Branch and B. P. Yadav to Asarganj Branch. It appears that these transfers were made as the workmen concerned resented to the management expressing their hardship and alleging that their transfers are illegal. Anyway, the appropriate Government referred industrial dispute for adjudication by this Tribunal on the following terms :

"Whether the action of the management of State Bank of India to transfer the three undermentioned workmen from Munghyer Branch to the branches shown against their names is justified ?

- (i) Shri Ashok Kumar, Clerk, transferred to Colgong Branch.
- (ii) Shri T. K. Bose, Clerk, transferred to Banka Branch.
- (iii) Shri Bindeshwari Prasad Yadav, Head Clerk, transferred to Sheikhpura Branch.

If not to what relief the workmen are entitled ?"

There is no dispute that the management assailed the order of the reference of the appropriate Government before the Hon'ble Patna High Court and later in the Supreme Court, but without any success.

6. The concerned workmen did not join their places of first posting nor did they join their second place of posting within the time stipulated by the management. They remained absent from duty and submitted some application for leave to the Branch Manager, Monghyr Branch from where they were relieved. The management issued them chargesheets dated 7-7-87 for disobedience to the lawful order of the management and for remaining absent unauthorisedly (Ext. W-1, W-2 and W-25). It appears that subsequently the management withheld increments of the concerned workmen and did not allow Ashok Kumar and T. K. Bose promotional chances.

7. Shri G. K. Verma, authorised representative of the complainant, contended that the issue of chargesheet during the pendency any proceeding before the Tribunal is not permissible under Section 33(1)(b) of the Industrial Disputes Act. But Section 33(1)(b) envisages that no employer shall for any misconduct connected with the dispute, discharge or punish whether by dismissal or otherwise any workman concerned in such dispute save and except with express permission in writing of the authority before which the proceeding is pending. The management has not discharged or dismissed any of the concerned workmen from service by way of punishment.

Then again, Shri Verma has asserted that the concerned workmen were punished by withholding of annual increments and refusal of promotion by the management. But there is no evidence on record to indicate that the management has inflicted punishment on them by withholding annual increments and disallowing promotion to any of them.

8. Shri Verma has submitted that the Bank management has altered the service condition of the concerned workmen while the dispute was pending before this Tribunal by withholding annual increments and disallowing promotion.

Admittedly, the concerned workmen did not join their first place of posting at all and second place of posting within the time stipulated by the management. They submitted some leave application to the Branch Manager, Monghyr from where they were already relieved of their duties. MW-1 A. P. Mukherjee has stated according to service rules, application for leave by an employee transferred to certain branch is to be submitted to the Branch Manager of that branch. That being so, the application for leave submitted by the concerned workmen were not in order and as the evidence of Shri Mukherjee discloses they remained unauthorisedly absent without any application for leave or sanctioned leave. According to service rules, the evidence of Shri Mukherjee discloses that no salary or increment is payable for the period of absence which is not covered by any sanctioned leave. He has further stated that none of the concerned workmen applied for extra ordinary leave. This being the evidence, it follows from the evidence of Shri Mukherjee that since the concerned workmen remained absent unauthorisedly for 527 days the dates of their increments have automatically changed and so there can be no question of withholding annual increments to them.

Shri Mukherjee has further stated that the concerned workmen were not given officiating opportunity in view of the fact that they became junior by reason of their unauthorised absence without sanctioned leave which was not counted for the length of service as well as for debarment policy. The relevant Debarment Policy of the Bank is re-produced here-below (Ext. W-15) :

"E. Debarment Policy

1. An employee could be debarred from promotion in two cases, i.e. when disciplinary proceedings are in progress and after punishment is awarded to him.
2. When disciplinary proceedings are in progress, the following procedure will be followed :

C. O. LETTERS NO. PER : IR : AKE : 17625 DT. 8-5-1978 & PER : IR : 023098 DT. 30-5-1980

C.O. D.O. LETTER NO. 36728 DT. 19-9-1978

- (1) An employee against whom disciplinary action is contemplated for an offence amounting to fraud misappropriation of money, forgery or any other act which prima facie amounts to criminal misconduct, shall be debarred from promotion for a period not exceeding 3 years, reckoned from the date such contemplation is advised to the employee in writing. In all other cases of disciplinary action, the bar will operate as from the date the employee is served with a charge-sheet."

Even so, Shri Mukherjee has stated that the management is contemplating to allow the concerned workmen. Ashok Kumar and T. K. Bose to appear in the next test held for

promotion in J. M. S. I. after obtaining permission from this Tribunal. Since the period of three years have already expired it is desirable that the management should consider in right earnest their cases for promotion in J. M. S. I.

9. From my discussion above, it is observed that the management did not alter the service conditions of the concerned workmen, alteration if there be any, has occasioned due to the consequences which flowed from the concerned workmen remaining absent unauthorisedly. Anyway, it is desirable in the interest of career development of the concerned workmen that the Bank management should consider the applications of the concerned workmen, for leave, if submitted afresh and routed through proper channel with an open mind and should endeavour to restore the seniority of these workmen. The Bank should consider the cases of the two workmen, namely, Ashok Kumar and T. K. Bose for promotion to J. M. S. I.

10. With these observations I dismiss the complaint petition on contest without cost.

S. K. MITRA, Presiding Officer

नई दिल्ली, 12 जनवरी, 1993

का. घा. 236.--औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, में भारत कोलिंग कोल लिमि. की घाटशत कोलियरी के प्रबन्धन के संबंध नियोजकों और उनके कर्मचारों के बीच के अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिनियम (सं. 1) धनबाद के पंचवट को प्रकाशित करती है जो केन्द्रीय सरकार को 11-1-93 को प्राप्त हुआ था।

[सं. एल.--20012/176/87डी-3 (ए) आईआर (कोल 1)]

एच. सी. गोड़, हेल्थ अधिकारी

New Delhi, the 12th January, 1993

S.O. 236.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal (No. 1) Dhanbad as shown in the Annexure in the Industrial Disputes between the employers in relation to the management of Bhatdee Colliery of M/s. BCCL and their workmen which was received by the Central Government on 11-1-93.

[No. L-20012/176/87-D.III(A)/IR (C.L.I.)]

HARISH GAUR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of a reference under Sec. 10(1)(d) of the Industrial Disputes Act, 1947.

Reference Nos. 51 of 1988 and Ref. No. 130 of 1988

PARTIES :

Employers in relation to the management of Bhatdee Colliery of M/s. BCC Ltd.

AND

Their Workmen

PRESENT :

Shri S. K. Mitra,
Presiding Officer.

APPEARANCES :

For the Employers : Shri R. S. Murthy, Advocate.
For the Workmen : Shri D. Mukherjee, Advocate.

STATE : Bihar

INDUSTRY : Coal

Dated the 24th December, 1992

AWARD

Reference case Nos. 51 of 1988 and 130 of 1988 have been heard together as the schedule to the orders of reference is identical.

2. By Order No. L-20012(176)/87-III(A), dated 'nil' and No. L-20012/176/87-D.III (A), dated 30-9-1988, the Central Government in the Ministry of Labour, has, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :

"Whether the action of the management of Bhatdee Colliery of M/s. B.C.C. Ltd., P.O. Mohuda, Dist. Dhanbad in stopping S/Shri Sewa Nunia and Mewa Nunia, Miner/Loader from duties is justified ? If not, to what relief are these workmen entitled ?

3. The case of the management of Bhatdee Colliery of M/s. B.C.C. Ltd., Dhanbad, as disclosed in its written statement-cum-rejoinder, details apart, is as follows :

The reference is bad in law and not maintainable. The appropriate Government did not examine the facts of the case properly and also did not apply its mind before making the present reference. The persons concerned, namely Sewa Nunia and Mewa Nunia are impersonators. There was originally one person with the name of Sewa Nunia, son of Ganesh Nunia working in Murulidih Colliery of BCCL as Wagon Loader. His address as recorded in the colliery records is village Murulidih, P.O. Mohuda, Dist. Dhanbad. He worked in the colliery from 2-1-70 for a few years and then he left as he was not interested in continuing his employment in the colliery. He applied for gratuity and it was also paid to him by cheque dated 21-2-1977. His date of birth was 12-5-1934. There was another person with the name of Mewa Nunia originally working in the Colliery as a casual Shale Picker. His date of birth was 19-9-1950 and the date of appointment was 20-5-1972. He was also not interested in continuing in his employment and left service on his own accord and never turned up at the Colliery for several years. Being a casual Wagon Loader he had no right to claim work every day or permanent employment. Several years after the Colliery Mazdoor Sabha of India took up the case of 27 persons including two persons purporting to be Sewa Nunia and Mewa Nunia. The management at that time had no suspicion that the union concerned was inducting impersonators into service of the management. In good faith and being under the impression that the union was not inducting any impersonators, the management decided to allow two persons who assumed the name of Sewa Nunia and Mewa Nunia to work in Bhatdee Colliery in April, 1981. A few days after they joined duty at Bhatdee Colliery, it was found that they were impersonators and the management therefore discontinued their employment. The matter was reported to the police. The Police authorities did not take any effective action. The two persons claiming employment are impersonate. When a person is not legally employed by the management and when he is an impersonator, there is no question of the management being required to follow the provisions of the Standing Orders. The Standing Orders are intended for genuine persons legally employed by the management. In view of the facts and circumstances the management have stopped the two persons from employment after they had worked for a few days.

4. The case of the concerned workmen, as disclosed in the written statement submitted on their behalf by the sponsoring union, Colliery Mazdoor Sabha of India, briefly stated, is as follows :

S/Shri Sewa Nunia and Mewa Nunia were working as casual Wagon Loader in 20/21 Pits Murulidih Colliery of M/s. BCCL alongwith other workmen. Sometime in 1976 all these wagon loaders and other casual time-rated employees were stopped from work due to policy decision of the management during the emergency period. The case of the concerned workmen could not be taken up immediately due to the circumstances prevailing during the emergency. The Union took up their cases with the management of M/s. BCCL at the Area level and after prolonged discussion these two work-

men, alongwith other 25 workmen, were directed to report for duty at Bhatdee Colliery as Miner/Loader by Office Order dated 4-4-81 and accordingly these two workmen reported for duty at Bhatdee Colliery as miner/loader and joined duty with effect from 13-4-81. They worked as miner/loader for about 13 months and were all on a sudden stopped from duty by the management of Bhatdee Colliery verbally without giving any reason. The action of the management in stopping these two workmen from work is illegal, arbitrary and violative of the provisions of Section 25-N of the Industrial Disputes Act in as much as no Notice Pay or retrenchment compensation was paid to these two workmen. The union demands that the two workmen should be re-instated to their original jobs as miner/loader in Bhatdee Colliery with continuity of service and back wages for the idle period.

5. In rejoinder to the written statement of the sponsoring union, the management has denied and disputed the contention of the union and stated that the emergency ended in early in 1979 and no explanation was forthcoming from the union as to how they have taken up the case after 8 years. The concerned workmen worked for a few days and they have no right to claim for employment under the management.

6. In its rejoinder to the written statement of the management, the union has assiduously denied the fact that the concerned workmen are impersonators. The local management after verifying the matter from all concerned gave employment to the concerned workmen. They are real persons and not impersonators as alleged by the management.

Reference No. 130 of 1988

7. No separate pleadings have been submitted by the parties arrayed in this case.

8. Shri R. S. Murthy, Advocate, for the management, submitted a petition on 31-7-91 in the reference cases stating that Bihar Colliery Mazdoor Sabha raised industrial dispute relating to the employment the very same workers S/Shri Sewa Nunia and Mewa Nunia in Bhatdee Colliery and the Central Government refused to refer the dispute to an Industrial Tribunal for adjudication. The Union challenged the decision of the Ministry by filing writ petition No. 2187 of 1988 before Hon'ble Patna High Court, Ranchi Bench and Hon'ble Court directed the management by its order dated 5-1-90 to provide employment to Sewa Nunia and Mewa Nunia and others in Mohuda Area as miners in the event, it requires to employ such persons. Annexure 5 to the writ petition discloses the name of the concerned workers. Mohuda Area of M/s. B.C.C. decided to implement the order of the High Court. In view of this fact, the present reference, according to the management, has become infructuous.

9. In opposition, the union has submitted that the preliminary objection raised by the management be overruled in view of the decision of Hon'ble Supreme Court in a catena of cases. This Tribunal is legally bound to answer the question referred to it for adjudication. The order of the High Court strengthens the demand of the workmen for their reinstatement in service with full back wages.

10. The pleadings of the parties disclose that the concerned workmen were working as wagon/loaders in Murulidih Colliery of M/s. B.C.C. Ltd. The case of the sponsoring union is that the concerned workmen were stopped from work due to the policy decision of the management during the period of emergency. The management has denied this contention and asserted that both these workmen abandoned or left the service of the colliery. The management has not laid any shred of evidence in support of the fact that the concerned workmen abandoned their employment. Abandonment is a matter of intention and it is required to be proved by evidence. Anyway, this issue is no longer a live issue since the management has admitted that the concerned workmen were allowed to work at Bhatdee Colliery in 1981. It is definite case of the union that the management by order dated 4-4-81 allowed the concerned workman and others 25 workmen to work as miner/loader at Bhatdee Colliery. Annexure 5 to the writ petition discloses the name of the concerned workmen and other 25 workmen. It is the definite case of the union that they joined their duty with effect from 13-4-81 and worked in the colliery for 13 months. The management has also admitted that it allowed the concerned workmen to work at Bhatdee Colliery in April, 1981, but for a few days. It is the firm case of the

management that these two persons were found impersonators and their services were dispensed with. No materials have been produced before me to prove the fact that the concerned workmen are impersonators. The management has not held any domestic enquiry to prove this fact. I consider that it was bounded duty of the management to hold domestic enquiry or an indepth enquiry to prove the fact that the concerned workmen are impersonators.

11. However, Shri Murthy has submitted that the present reference is covered by the order of the High Court in writ petition No. CWJC 2187 of 1988 dated 5-1-90. The order of the Court reads as follows :

"The petitioner has filed a supplementary affidavit annexing a copy of office order dated 4-4-1981 Annexure-5 to show that the workmen concerned were directed to report for duty at Bhatdee Colliery. One of the grounds on which the appropriate Government has refused to refer the dispute, as appears from Annexure-3, is that the dispute has been raised after the lapse of seven years, and no satisfactory reason has been given for the delay in raising the dispute. In view of the decision in the case of Bombay Union of Journalists and others Vs. State of Bombay and another (AIR 1964 SC 1617), no relief can be granted to the petitioners on the ground that the claim was a stale one. It was, however, submitted on behalf of the petitioner that the respondent concerned should at least be directed to consider the case of the petitioner concerned, first, in the event, it requires to employ persons as miners for cutting coal. The submission appears to be reasonable. As noticed in Annexure-5, the concerned workmen were directed to report for duty at Bhatdee Colliery. That being the position, respondent No. 4 is directed to consider the case of the persons appearing in Annexure-5 for employment as miners, in the event, it requires to employ such persons."

12. The management as I have stated before did not hold domestic enquiry to prove the fact that the concerned workmen were impersonators nor did it produce any evidence to indicate that it held in-depth enquiry to prove that the concerned workmen are impersonators. This being so, the concerned workmen are entitled to get back employment from their employer and the action of the management in stopping them from duties is not justified.

13. Shri Murthy has submitted that the management of Mohuda Area of M/s. B.C.C. Ltd. has decided to implement the order of the Hon'ble Court.

Shri D. Mukherjee has submitted that in the circumstances the reference case be disposed of accordingly.

14. Hence, the following award is rendered—the action of the management of Bhatdee Colliery of M/s. B.C.C. Ltd., P.O. Mohuda, Dist. Dhanbad, in stopping S/Shri Sewa Nunia and Mewa Nunia, miner/loaders from duties is not justified. The management is directed to give them employment in conformance to the order of the Hon'ble Court.

This order also governs Reference No. 130 of 1988. In the circumstances of the case I award no cost.

Sd/-

S. K. MITRA Presiding Officer

नई दिल्ली, 12 जनवरी, 1993

का. आ. 237 -- औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अन्वयेण में केन्द्रीय सरकार ग. राज्य फोकिन कोव. निय. का सुझाव दे पिया के प्रत्यक्ष के संबद्ध नियोजकों और उनके कार्यकर्ता के बीच, श्रम क्षेत्र में निहित औद्योगिक विवाद ने केन्द्रीय सरकार औद्योगिक अधिनियम (1947) धारा 17 के अन्वयेण में प्रकाशित शर्ती है, जो केन्द्रीय सरकार को 12-1-93 को प्रकाशित था।

[सं. एन.- 2001/5/93-डी-5 (ए) आई. एन. (कॉल-1)]

एच. गो. गोड, प्रमुख अधिकारी

5. In addition to the written statement of the union, the management has denied that the concerned workmen are performing the duties of leading personnel. The management has also denied that they are entitled to be placed in Technical & Supervisory Grade 'C' of NCWA-III as per Implementation Instruction No. 38 of 84.

6. The union, in order to support its demand, has examined one of the concerned workman WW-1 Govind Singh and laid in evidence some documents which have been marked Exts. W-1 to W-8[1].

On the other hand, the management has examined only one witness, MW-1 Prakash Chandra Agarwal, now posted as Superintendent of Mines in Sudamdih Shaft Mine and laid in evidence some documents which have been marked Exts. M-1 to M-3.

7. The pleading of the management discloses that the concerned workmen were originally piece-rated miners at Sudamdih Shaft Mine. WW-1 Govind Singh has stated that he joined Sudamdih Colliery in 1975 after being transferred from Burragarh colliery and at that time he was a piece-rated worker. He has further stated that earlier the other concerned workmen in this case were either piece-rated workers or time-rated workers.

8. In 1982 an industrial dispute was raised by the Coalfield Labour Union demanding regularisation of the four workmen which included the concerned workmen as Underground Work Supervisor and the dispute was referred for adjudication to the Central Government Industrial Tribunal No. 2, Dhanbad, on the following terms :

"Whether the action of the management of Sudamdih Project of Messrs Bharat Coking Coal Ltd., P.O. Sudamdih, District Dhanbad, in not regularising S/Shri Rameshwar Mistry, Govinder Singh, Govind Singh and Tapeshwar Yadav as Underground Work Supervisor in Clerical Gr. II is justified? If not, to what relief are the workmen concerned entitled?"

During the pendency of the proceeding before the Tribunal the parties arrived at an amicable settlement and accordingly

an award was rendered. In terms of the award the Tribunal passed the following award dated 4-5-83 (Ext. W-1 = M-1):

"According to the terms of settlement S/Sri Govindra Singh Govind Singh and Tapeshwar Yadav were selected by the Selection Committee and as such they were appointed as work supervisor in the Technical and Supervisory Gr. 'E' with effect from 1-2-82. It is agreed by both the parties that the other concerned workman Tapeshwar Mistry will be placed as underground work supervisor Gr. 'E' of NCWA-II in the pay scale of Rs. 460.00-16.00-652.00 and he will be benefitted by giving him notional seniority in that post with effect from 1-2-1982....."

9. It is the case of the management that apart from these four workmen concerned the other workmen listed in the present reference and performing the same nature of duties as the four others were performing were placed as Work Supervisor in Technical and Supervisory Grade 'E'. Now, it is an undeniable position that all the concerned workmen of the present reference have been designated as Work Supervisor and placed in Technical Grade 'E'.

10. The designation of Work Supervisor does not find place either in the Wage Board Recommendation or in N.C.W.A. or in Nomenclature, Job Description and Categorisation of Coal Employees issued by the Joint Bipartite Committee for the Coal Industry.

It is the case of the concerned workmen that they belong to loading personnel and have been doing the job of loading and unloading of materials both on the surface and in underground mine. Their job description as provided by the management contains in Ext. W-7 appended hereunder is a separate sheet.

ANNEXURE-A

Bio-Data and Details of Job Nomenclature of Workers and Supervisors

Sl. No.	Names	Date of appointment	Dt. since whom placed in Grade-E as Works Superv.	Nature of job entrusted
1	2	3	4	5
1.	S/Shri Rameshwar Mistry	21-6-71	1-2-82	1. Supervising the heavy material supply gangs and
2.	Gobinder Singh	31-5-71	1-2-82	material supply gangs at 200 MW in every
3.	Govind Singh	14-8-71	1-2-82	shift.
4.	R.K. Mishra	14-8-71	1-2-82	2. Keeping records in field book of the material
5.	Inderdeo Ram	20-6-70	1-2-82	lowered supply to different sections during a shift.
6.	Tapeshwar Yadav	23-6-70	1-2-82	
7.	Raj Narain Singh	13-6-70	1-2-82	1. Supervising the works of loco operators, tiammers.
8.	Chhedi Lal Pd.	2-3-72	1-2-82	
9.	Ramadhar Sharma.	2-9-75	1-2-82	2. Supply of empty cars to different working section for loading and load cars to the shaft level for hoisting theregh Shaft No. 1 in every shift.
				3. Keeping record of Mine Cars supplied to different section cars loaded a different loading points, left balance loaded/empty mine cars at different

The management has specifically pleaded in its pleading that the concerned workmen are working in underground mine as Work Supervisor whereas the designation and pay scale of Asstt. Loading Inspector is made for the employees working in the colliery siding where coal is loaded into wagons and trucks. The job of Asstt. Loading Inspector is directly connected with wagons and trucks loading operation in the siding on the surface. The concerned workmen are in no way connected with the loading of coal in the siding on the surface. Regard being had to the cadre scheme of loading personnel it appears that the concerned workmen are claiming the designation and scale of wages available to Loading Inspector/Asstt. Loading Superintendent. MW-1 Prakash Chandra Agarwal has stated in his testimony that the concerned workmen are not doing any work connected with the loading of coal. They are not doing the job of allotment of work to the piece-rated workers nor are they doing the job of measurement of work done by the piece-rated miner. Asstt. Loading Inspector/Loading Inspectors are posted in such collieries of M/s. BCCL which fall in the railway siding and the job of loading inspector is to arrange for allotment of wagons and to keep accounts of all sorts relating to loading of coal into wagons. They are required to prepare the wage bills and to maintain Form VA. The Loading Inspectors are required to do the job of allotment of work to the wagon loaders. The Loading Inspectors are answerable to loading of right quantity and quality of coal into railway wagons. According to Sri Agarwal, all the concerned workmen are underground workers and in underground mine there is no job as is being done by Loading Inspectors and Asstt. Loading Inspector on the surface.

11. The contention of the concerned workmen, as stated by WW-1 Govind Singh that since they are supervising loading and unloading sands and materials in underground mine, they should be designated as Asstt. Loading Inspectors and placed in the same scale of wages as available to Asstt. Loading Inspectors.

12. Nomenclature, Job Description and Categorisation of Coal Employees issued by the Joint Bipartite Committee for the Coal Industry does not envisage any job description for any loading personnel. Nevertheless, the fact is that Standardisation Committee has been set up to examine and standardise different designations, job descriptions etc. of different sets of employees employed in coal industry. Since the job description of loading personnel has not been spelt out in the Nomenclature, Job Description and Categorisation of Coal Employees it is very difficult either to include or to exclude the concerned workmen from the category of loading personnel. It is for a Committee having expertise to examine, explore and decide the matter and such Committee is the Standardisation Committee set up as per N.C.W.A. II, III and IV. The nomenclature of job description and scale of wages for the concerned workmen be left to the Standardisation Committee to decide.

13. Accordingly, the following award is rendered--the demand of Coalfield Labour Union for designating the concerned workmen as Asstt. Loading Inspectors in Technical and Supervisory Grade 'C' be referred by the union to the Standardisation Committee for decision.

In the circumstances of the case, I award no cost.

S. K. MITRA, Presiding Officer

सई दिनांक १५ जनवरी, १९९३

का. आ. २३८ :—औद्योगिक विवाद अधिनियम, १९४७ (१९४७ का १४) की धारा ३१ में (२) के अन्वयेण में, केन्द्रीय सरकार, एडि. यन आयरन एण्ड स्टील कम्पनी लिमि. के प्रबन्धन में नबद्ध नियोजकों और उनके कर्मचारों के बीच, अन्वयेण में निरूपित औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकाय, (म. १), अन्वयेण के पक्ष को प्रकाशित करती है, जो केन्द्रीय सरकार को ११-१-९३ को प्राप्त हुआ था।

[नं. एड -२००२५/६/९३ आई आर (सी)-१]

एड सी. गौड़, हेल्थ अधिकारी

S.O. 238.—In pursuance of Section 33-C(2) of the Industrial Disputes Act, 1947 (14 of 1947), and as desired by the Presiding Officer, the Central Government hereby publishes

199 GI/93-6.

the Award of the Central Government Industrial Tribunal (No. 1) Dhanbad as shown in the Annexure in the management of M/s. India Iron and Steel Co. Ltd. and their workmen which was received by the Central Government on 11-1-93.

[No. L-20025/6/93-IR(Coal-I)]
HARISH GAUR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT LABOUR COURT NO. 2, DHANBAD

Application under Sec. 33-C(2) of the Industrial Disputes Act, 1947

L.C. Application No. 16 of 1989

PARTIES:

Sri D. P. Chatterjee and others, C/o Sri Mithu Mahato
Secretary, Indian National Mines Overman Sardar,
Shot Firers' Association (INMOSA), Chasnala, P.O.
Chasnala, Dist. Dhanbad.

... Applicant

Versus

M/s. Indian Iron and Steel Company Limited, Chasnala
Colliery/Jitpur Colliery, P.O. and P.S. Chasnala,
Dist. Dhanbad.

... Opp. Party.

PRESENT

Shri S. K. Mitra, Presiding Officer.

APPEARANCES:

For the Applicants—Shri P. R. Rakshit, Advocate.

For the Opp. Party—Shri B. Joshi, Advocate.

STATE : Bihar.

INDUSTRY : Coal.

Dated, the 30th December, 1992

ORDER

The applicants have preferred this application under section 33-C(2) of the Industrial Disputes Act, 1947 lying claim for different sums of money against their employers.

2. The case of the applicants is, that they have been working sincerely, honestly and efficiently for decades together in the underground mines of the Opp. Party—employer with risk of their lives. But the employer without any justification withheld payment of overtime/charge allowance for the period from 21-1-1986 for which a detailed claim chart marked as Annexure-A has been appended to the application and this chart is a part of the present application. The applicants are legally entitled to receive the amount/amounts as set forth in the Annexure. The applicants have been working as Overman and Mining Sirdars in Chasnala Colliery and Jitpur Colliery of the employer and as usual they are required to take over and hand over charge so far as the gravity and nature of their services are concerned. They cannot leave their place of duty just after their shift is over. It takes more than 45 minutes of detention of extra time to perform the aforesaid handing over and taking over charges in each shift daily for which the applicants are entitled to charge allowance or overtime allowance. They earlier raised their grievance before the management/Opp. Party explaining the pain of work and a tripartite settlement was reached between the management, the union representing the workmen as also the Government of India through R.L.C. (C) and A.L.C. (C), Dhanbad, on 4-1-80 which is also a part of this application. Item No. (i), (ii), (iii) and (iv) of the said settlement is the basis of the claim where from the right of the applicants is derived and since the aforesaid settlement has been acted upon and the applicants have paid accordingly, it has become the conditions of service of the applicant as the said settlement has statutory force which cannot be violated by any means. The Opp. Party/Employer has arbitrarily, illegally and without any authority whatsoever all of a sudden withheld payment of handing over/taking

over charge allowance/overtime with effect from 21-1-86 for which the applicants are legally entitled to recover and the Opp. Party is liable to pay. The union has espoused the various causes of the workmen and the same could not be settled either by the management/Opp. Party or by the Government or by the Conciliation Officer. The subject-matter of the dispute was disposed of by the Hon'ble Patna High Court, Ranchi Bench, by their order dated 16-5-89 in reference to CWJC No. 216/88(R) in which their Lordships rightly advised to obtain speedier relief by way of filing application under section 3-C(2) of the I.D. Act, 1947. There is no dispute with regard to the payment of charge allowance/overtime. The applicants derived their right from the work, they rendered beyond their duty hours which is covered by a settlement dated 4-1-80 which was given retrospective effect from 1-7-78. The management/Opp. Party implemented the terms of the settlement. So far as this claim is concerned it has become the existing right of the applicants. Such workmen of the other units of Coal India Ltd. namely, M/s. B.C.C. Ltd., M/s. E.C. Ltd., M/s. C.C. Ltd. doing identical nature of job are being paid charge allowance and thus the workmen of the neighbouring units of the Steel Authority of India Ltd., a Government Company cannot be discriminated. The applicants are entitled to recover the sum due to them as per details given in Annexure in respect of the charge allowances/overtime for the period from 21-1-86 to date.

3. The Opp. Party/Management has contested the matter by submitting written statement-cum-rejoinder.

The case of the Opp. Party is that the applicants have been appointed as Mine Officials to perform supervisory duties prescribed under Coal Mines Regulation 1957 specifically prescribed under Regulation 43 and Regulation 44. They remain in charge of control and supervision of the Mining district under their charge and have got statutory authority to give directions to all workmen employed in the mining district under their respective charge. The total wages consisting of monthly salary, quarterly bonus etc. of the applicants except a few exceeds Rs. 1600 per month. Therefore, the Senior Overman, Overman and Mining Sirdars, who were supervisors, are not workmen within the meaning of Section 2(s) of the Industrial Disputes Act, 1947 and hence, the present application is not maintainable. The applicants hold the position of supervision under Sec. 37 of the Mines Act, 1952 and they belong to exempted categories of persons employed in a mine from operations of Sections 30 and 31 of the Mines Act as regards limitation of working hours. They are not entitled to overtime as prescribed under sec. 33 of the Mines Act in view of the Notification No. GSR 975 dated 11-8-60 under Section 83 of the Mines Act, 1952. Making over and taking over of charge by the reliever supervisors would not invoke any extra time if the relieving supervisor reports for duty on time. Section 37 of the Mines Act provides that Section 36(5) of the said Act shall not apply to persons who may, by rules, be defined as the persons holding positions of supervisory or managerial in capacity and therefore, the applicant supervisors, as they are, there cannot have any fixed time or working for them. In any event, the application under Sec. 33C(2) of the I.D. Act is not entertainable. Considering supervisory nature of job of the applicants and their status as 'mine officials' their scale of pay and grades having been sufficiently increased under NCWAs, they are not entitled to overtime wages for remaining sometime in underground mine for handing over and taking over charge. It was proposed in 1979 that the mining supervisory personnel should hand over their charge to their corresponding supervisory personnel of the next shift by making joint inspection of all the working places of the mining district and to write down the existing defects on the diaries, provided to them. They were required to sign on the handing over and taking over charge report at the empty space of the diaries. As this arrangement was time consuming the management proposed to pay certain extra amount by way of overtime wages. In this connection a settlement dated 4-1-80 was arrived at and the same was implemented for payment of extra wages by way of overtime computed at the rate of 45 minutes for mining sirdars and overmen and 30 minutes for shot firers per day for taking over and handling over charge. In course of time it became difficult to enforce such method of taking over and handling

over charge. The mining supervisory personnel stopped the practice of handing over and taking over charge by making joint inspection and signing on the charge report in view of the practical difficulty and to avoid statutory responsibility and ultimately adopted the previous mode of writing the report in the diary and handing over the diary to the next shiftman at the end of the shift. The management/Opp. Party thereafter stopped payment of overtime wages to the applicants under settlement dated 4-1-80.

4. In rejoinder to the written statement of the Opp. Party/Management the applicants have contended that all of them are workmen within the meaning of Sec. 2(s) of the I.D. Act and their application under Sec. 33-C(2) is competent. According to them, the management/Opp. Party has mis-interpreted Sec. 37 of the Mines Act and limitation as envisaged under Secs. 30 and 31 of the said Act. The true import of the Sec. 33 of the Mines Act supports the contention of the applicants. The applicants have reiterated that they are required to hand over and take over charge. The settlement dated 4-1-80 is very much in force and although the applicant have been doing extra work, they are not being paid extra wages. The applicants have been rendering extra work for 45 minutes in the matter of handing over and taking over charge, but the management/Opp. Party unreasonably stopped payment of extra wages.

5. In rejoinder to the written statement, the management/Opp. Party reiterated that the applicants are not workman within the meaning of Sec. 2(s) of the Industrial Disputes Act. The management has reiterated that all the provisions of Coal Mines Regulations and Mines Act cited by it in its written statement are applicable in the present case and the applicants are not entitled to any extra wages/overtime wages as claimed.

6. The applicants have examined two witnesses, namely, WW-1 Mithu Mahato and WW-2 Bishwanath Singh and laid in evidence only one item of document i.e. settlement dated 4-1-80 which has been marked Ext. W-1.

On the other hand, the management/Opp. Party has examined two witnesses, namely, MW-1 R. Paul, presently holding the post of Manager (Personnel), Chasnala Colliery of M/s. HISCO and MW-2 P. Prasad, now working as Manager Chasnala Colliery and laid in evidence some documents which have been marked Exts. M-1 to M-10.

7. Shri B. Joshi, learned Advocate for the Opp. Party, has submitted that the Mining Sirdars and Overmen are not workmen within the meaning of Sec. 2(a) of the Industrial Disputes Act as they were employed in supervisory capacity and drawing wages more than Rs. 1600 per month. In this connection he has referred to me the provisions of Regulations 2(20), 43, 44 and 45 of Coal Mines Regulations, 1957 and the wage-sheets marked Ext. M-10.

Shri P. R. Rakhit, learned Advocate for the applicants has countered this argument by submitting that the applicants are workmen within the meaning of Sec. 2(s) of the Industrial Disputes Act and that the provisions of Coal Mines Regulations cited by Shri Joshi are not indicative of the fact that the concerned applicants are employed in supervisory capacity.

Sec. 2(20) of Coal Mines Regulations envisages that Overmen and Sirdars, amongst others, are official within the meaning of that regulations.

The provisions of Regulations 43, 44 and 45 underline the duties and responsibilities of Overmen, Mining Sirdars or other competent persons and shot-firer respectively.

Shri Joshi has stated that in consideration of the statutory duties prescribed for overmen and mining Sirdars by Coal Mines Regulation 47 these two categories of employees are employed in supervisory capacity and since they draw wages exceeding Rs. 1600 per month, they are not workmen within the meaning of Sec. 2(s) of the Industrial Disputes Act.

Shri P. R. Rakhit has submitted that the principal duties of these categories of employees are to ensure safety arrangement of the mines and they are not in charge with overall supervisory duty of subordinates working in the mine under them.

8. The word 'supervisor' and its derivatives are not words of precise import and should be construed in the light of the context. The word 'supervisor' means to oversee, to look after. Therefore, supervision which is relevant in this con-

nection is the supervision done by an employee in a higher position over the employees in the lower position. The provision of Coal Mines Regulations as mentioned above and the evidence on record do not indicate that Overmen and Mining Sirdars have got control and supervision over all work of other employees in lower position. Principal duties of these categories of employees are to ensure safety arrangement in the mine and in the course of performance of such duties they are required to see that the subordinate officials and competent persons in the district carry out their respective duties in a proper manner. They have not the power to distribute work to the subordinate nor have they power to over-see the work of the subordinates not related to safety measure. In this connection the foreword of the Celebrated Author, Peter F. Drucker to the book entitled the Supervisor His relations to persons and to work written by Mary-Cushing Niles and S. Kumar Jain elucidates the point.

"The supervisor always has three jobs every day. He lays out and organizes the work and its flow. He, therefore, has to understand the work and be technically competent in his area. And it depends on him whether the work of his section contributes to the work of the entire organization or whether it impedes. It is his job always to make sure that the work he manages fits the needs of the whole organisation.

Secondly, the supervisor always determines what people can produce and how well they produce. He organizes people. But, above all, he sets their standards and largely establishes the climate of aspirations and self-demands of his work force. He is primarily responsible for the training of his men, primarily responsible for their motivation and for their willingness to improve themselves and their performance. It is the supervisor, above all, who controls productivity. And nowhere is this more relevant than in a developing country where one cannot expect the worker to bring with himself adequate standards and adequate self-demands, but where these have to be set when a man first comes to work.

Finally, the supervisor represents management, is indeed management. His seriousness, his competence, his skill will, therefore, not only determine how well he and his section can perform. They will represent to his work force the seriousness, aspirations, and skill or management altogether. And nothing is more important in the motivation of a work force than respect for the competence, the seriousness, and the skill of the management which, by and large, means their direct supervisor."

Thus, it is obvious that it is the duty of supervisor—(1) to lay out and organize the work and its flow, (2) to determine what people can produce and how well they produce and organize people for that purpose, and (3) to represent the management and to motivate the work force for execution of work properly and competently. These are the principal and core duties of supervisor. The duties of Overmen and Mining Sirdars as prescribed by Coal Mines Regulations fall far behind the duties of the supervisor as outlined and highlighted by the Celebrated Author.

9. MW-2 P. Prasud has stated in his testimony that the applicants being Overmen and Mining Sirdars are not entitled to appoint anybody, dismiss anybody or initiate disciplinary proceeding against any workman working under them. They are technical staff of the colliery. WW 1 Mithu Mahato, one of the applicants, has stated that they have no authority to appoint any workman, to take disciplinary action and to dismiss any workman from service. Besides, they have no power to recommend or grant increment, leave etc. to any workman and their job is of technical nature. In the context of this evidence Shri Rakshit has cited two cases—one between Sudhir Kumar Vs. M/s. Ferro Alloys Corporation Ltd. reported in 1992 Lab. I.C. 657 (Bombay) and the other between M/s. U.P. State Sugar Corporation Ltd. Vs. Dy. Labour Commissioner, Meerut and others reported in 1990 Indian Factories & Labour Reports (Vol-60) page 97. Proposition of law enshrined in these decisions are that the employees performing work essentially of technical nature having power to recommend leave but no power to sanction leave or to take disciplinary action are workmen within the meaning of Sec. 2(s) of the Industrial Disputes Act and their duties cannot be said to be of supervisory nature. This being the position, I have

no hesitation to hold that the applicants are workmen within the meaning of Sec. 2(s) of the Industrial Disputes Act.

10. There is no dispute that all the concerned applicants have been working in underground mines of the collieries and that in the course of performance of duties they are required to hand over charge to the successors and take over charge from their predecessors. It appears that in the process of handing over and taking over charge the applicants were required to work overtime varying from 45 minutes and the matter was settled by a settlement arrived at between the management, union of the applicants, R.L.C.(C), Dhanbad and A.L.C.(C), Dhanbad by settlement dated 4th January, 1980 (Ext. W-1). The relevant provisions of this settlement are gleaned hereinbelow:

"Payment of handing over/taking over charge—

- (i) The management have agreed to pay fixed O.T. payment for 45 minutes per day to each of the overman/senior overman and mining sirdars who perform duties as per Coal Mines Regulations, 1957.
- (ii) The shot-firers also shall be paid O.T. payment for 30 minutes a day after they are required to work for the full period of 8 hrs. But if the management arrange the work of Shot Firers in such a way that none of the Shot Firers is required to work for more than 7-1/2 hrs. each day, no such payment would be admissible. But if they are detained beyond 7-1/2 hrs. on any day, such Shot Firers would also become entitled to the extra payment of 30 mts. overtime.
- (iii) For the purpose of handing over/taking over charge as required under the Coal Mines Regulations, 1957, overtime payment shall not exceed 20 hrs. per month in each case.
- (iv) As regards payment of the handing over/taking over charge, allowance, overtime payment etc. as decided above be given retrospective effect from 1st July, 1978 as demanded by the union on per with M/s. BCCL and M/s. ECL, the management have agreed to examine the matter further as in their view they have paid overtime wages to the mining personnel for whatever period they were detained on duty in the mines including the period required for handing over/taking over charge. The union is not convinced that any such payment has been made for handing over/taking over charge and overtime payment has been made only when the staffs have been detained or called for extra hrs. in absence of substitute. Since there is difference of opinion in this regard, it is requested that the management and the union's representatives should meet and satisfy each other by examination of the records at 3 collieries on 11th January, 1980 at Chasnalla Colliery (in the afternoon), 14th January, 1980 at Ramnagar Colliery (in the afternoon) and 16th January, 1980 at Jitpur Colliery (in the afternoon). The matter will be taken up further for discussion after the examination of records is over.
- (v) The above payments shall be brought into force with effect from 1st January, 1980."

In terms of this settlement the applicants were allowed overtime payment for 45 minutes per day to Overmen and Senior Overmen and 30 minutes per day to Shot Firers. There is no dispute that this settlement was implemented. There is nothing in the evidence to indicate that this settlement was to remain in force for such period as is agreed upon by the parties. There is no dispute that this settlement has not been annulled, abrogated or rescinded. Section 19(2) of the Industrial Disputes Act envisages that such settlement shall remain binding for a period of six months from the date on which the memorandum of settlement is signed by the parties to the dispute, and shall continue to be binding on the parties after the expiry of the period aforesaid until the expiry of two months from the date on which a notice in writing of an intention to terminate the settlement is given by one of the parties to the other party or parties to the settlement. The Opp. Party has not given any notice of termination of the settlement. Hence this settlement still remains binding as it was before.

Shri Rakshit has submitted that the benefit of the settlement is enjoyed on the service conditions of the applicants and

hence, the Opp. Party cannot change the service condition without giving statutory notice under Section 9-A of the Industrial Disputes Act. But in my view, this contention is not sustainable. The right of the applicants to get overtime wages/charge allowance springs from the settlement and if the settlement is abrogated by any of the parties to the settlement. It loses its force.

11. Shri Joshi has further submitted that G.S.R. 975 dated 11th August, 1960 issued under Section 83 of the Mines Act is a complete bar to entitlement of overtime wages as prescribed under Sec. 33 of the Mines Act. But this Notification has since been superseded by S.O. 3699 dated 22nd November, 1965. Item No. 9 of the schedule to the S.O. discloses as follows :

Schedule

Name of mines and classes of persons exempted.	Provisions from which exemption is granted.	Condition attached to exemption
1	2	3
Persons defined in rules as holding positions of supervision of management or employed in confidential capacity.	The provisions contained in Sections 29, 33, 35 & 36.	Provided that the exemption from Sec. 33 shall not operate to the prejudice of any rights to which such person may be entitled under the terms of any award, agreement, or contract of service.

The provision envisages that exemption from Section 33 shall not operate to the prejudice of any rights to which the employees may be entitled under the terms of any award, agreement or contract of service. In the present case the applicants

have based their claim on the settlement and hence they cannot be considered as exempted category of workmen not entitled to overtime wages.

12. The Opp. Party has contested on facts the right of the applicants to get overtime wages/charge allowance. It has been contended that earlier the Joint Inspection of the site was introduced in order to make over and take over charge, but this system has been abandoned and so the Overmen and Mining Sirdars are not required to work extra time for handing over and taking over charge. This position has been denied by the applicants. MW-2 P. Prasad has stated that this system of Joint Inspection has since been abandoned. The applicants have not accepted this position. There is no documentary evidence to indicate that such system was abandoned. Shri Prasad has admitted in cross-examination that he does not know if the Director General of Mines Safety was informed of the abandonment of the joint inspection. This being the evidence, I am constrained to hold that the theory of abandonment of Joint Inspection has been introduced by the management in order to stall the claim of the applicants.

The management has produced some attendance registers and Cap Lamp Registers, extract of such registers marked Exts. M-4 to W-7, to prove that the applicants do not have to work any extra time. But the concerned employees who have maintained these registers have not been examined. The registers, it appears, have been kept in a mechanical way. On the other hand, the Overmen Report Books and Mining Sirdars Report Books (Exts. M-8 and M-9) prove the fact that the applicants are still required to work extra time obviously for handing over charge. Hence, the plea taken by the Opp. Party that the applicants are not required to work extra time for handing over and taking over charge is not sustainable.

13. The applicants have been working as Senior Overmen, Overmen, Mining Sirdars of Jitpur Colliery and Chasnalla Colliery. They have claimed different sums of money for performing extra time work by way of charge allowance or overtime from 21st January, 1986 till the date of submission of the application on 14th June, 1989. The Opp. Party has not controverted the arithmetical accuracy of this claim. Hence, I allow the claim of the applicants as per the chart as appended hereinunder. The management is directed to pay the amount to the applicants within two months from the date of this notification of this order.

S. K. MITRA, Presiding Officer

For handing and taking overcharge allowance O.T. L.S.C.O. Jitpur Colliery on 21-1-1980 to continuous

Sl. No.	Name	Designation	P. No.	Hand over/Take over charge allowance	Total Hrs. Per Attendance	Total amount in Rupees.	Remarks
1	2	3	4	5	6	7	8
						Rs.	
1.	D.P. Chatterjee	Senior Overman	4257	45 Mts./day Per day	1599	19,093.45	
2.	Y.K. Gupta	"	4078	from 21st Jan.	s.	19,093.45	
3.	B.P. Srivastav	"	4227	1986 to still	"	19,093.45	
4.	S.K. Chatterjee	"	4086	continuing	"	19,093.45	
5.	S.N. Singh	"	"	"	"	19,073.45	
6.	C.P. Gupta	"	4074	"	"	18,053.05	
7.	S.K. Ganguly	"	4083	"	"	18,053.05	
8.	G.N. Dey	"	4222	"	"	18,053.05	
9.	A.K. Chakrabarti	Overman	4220	"	"	17,164.10	
10.	B.N. Roy	"	4217	"	"	17,164.10	
11.	Amarjit Singh	"	4247	"	"	17,164.10	
12.	A.K. Pramanik	"	4248	"	"	17,164.10	
13.	B. Sharma	"	4335	"	"	17,164.10	
14.	Sukhdeo Singh	"	4221	"	"	17,164.10	
15.	L.N. Das	"	4216	"	"	17,164.10	
16.	D.K. Banerjee	"	4089	"	"	17,164.10	
17.	S.K. Chatterjee	"	4123	"	"	17,164.10	
18.	A.K. Bhattacharjee	"	4241	"	"	17,164.10	

1	2	3	4	5	6	7
19.	R.D. Prasad	Overman	4223	45 MU/Day	1599hrs.	16,705.45
20.	P.N. Singh	"	4270	"	"	15,782.25
21.	R.K. Singh	"	4307	"	"	16,705.45
22.	S.B. Singh	"	4368	"	"	16,705.45
23.	G.P. Gupta	"	4261	"	"	15,782.25
24.	S.K. Mitra Roy	"	4258	"	"	16,705.45
25.	Chandrika Singh	"	4366	"	"	16,705.45
26.	M. Banerjee	"	4320	"	"	16,705.45
27.	B.K. L. Srivastav	"	4285	"	"	16,705.45
28.	Nandice Singh	"	4377	"	"	16,705.45
29.	Ram Kripal Singh	"	4563	"	"	16,705.45
30.	Ajit Chowdhury	"	4454	"	"	16,182.70
31.	S. Mitra	"	4223	"	"	17,164.10
32.	Sudeswar Shaw	"	4466	"	"	16,182.70
33.	D.K. Roy	"	4349	"	"	15,239.70
34.	R.B. Misra	"	4387	"	"	16,182.70
35.	Jagannath Singh	Mining Sirdar	4218	"	"	15,843.75
36.	A.K. Dhanaldeo	"	4340	"	"	15,843.75
37.	Salaram Singh	"	4245	"	"	15,843.75
38.	Shyam Singh	"	4230	"	"	15,843.75
39.	S.P. Kewat	"	4242	"	"	15,843.75
40.	H.D. Singh	"	4263	"	"	15,843.75
41.	Asrafi Singh	"	4127	"	"	15,843.75
42.	T. Mahato	"	4113	"	"	15,843.75
43.	T.P. Mukherjee	"	4222	"	"	15,843.75
44.	D. Prasad	"	4240	"	"	15,843.75
45.	Salim Khan	"	4347	"	"	15,843.75
46.	Sudershan Singh	"	4117	"	"	15,843.75
47.	M.M. Das	"	4374	"	"	15,843.75
48.	J.N. Choubey	"	4224	"	"	15,843.75
49.	Sona Bowri	"	4106	"	"	15,843.75
50.	Guliran Mahato	"	4370	"	"	15,843.75
51.	A.K. Banerjee	"	4311	"	"	15,843.75
52.	Ab. Ansari	"	4114	"	"	15,843.75
53.	G.C. Patra	"	4280	"	"	15,420.75
54.	A.S. Patra	"	4456	"	"	15,420.75
55.	S.P. Singh	"	4457	"	"	15,420.75
56.	R.S. Singh	"	4463	"	"	15,420.75
57.	R.D. Sharma	"	4385	"	"	15,420.75
58.	Surendra Singh	"	4470	"	"	15,420.75
59.	A.P. Sukla	"	4468	"	"	15,420.75
60.	Surajit Singh	"	4460	"	"	15,420.75
61.	Mukhtar Singh	"	4302	"	"	15,420.75
62.	Chandrika Singh	"	4409	"	"	12,927.25
63.	Dilip Das	"	4408	"	"	12,927.25
64.	T.L. Shaw	"	4164	"	"	12,927.25
65.	Nandalal Paswan	"	4564	"	"	13,805.80
66.	Lal Chand Sharma	"	45559	"	"	13,805.80
67.	B.N. Singh	"	4392	"	"	13,805.80
68.	Feku Singh	"	4495	"	"	13,805.80
69.	S.C. Banerjee	"	4405	"	"	14,183.85
70.	Gopal Singh	"	4555	"	"	12,329.60
71.	Jaichand Roy	"	4547	"	"	11,352.20
72.	R.P. Mukherjee	"	4406	"	"	15,006.85
73.	Ajit Misra	"	4563	"	"	11,352.20
74.	B.S. Majhi	"	4330	"	"	15,843.75
75.	D.N. Jaswal	"	4546	"	"	11,352.20
76.	R.N. Bhattacharjee	"	4295	"	"	15,006.85
77.	Ali Ahmad	"	4557	"	"	11,262.35
78.	Anirudh Gope	"	4556	"	"	11,262.35
79.	P. Jaulav	"	4455	"	"	15,420.75
80.	Kapildeo	"	4412	"	"	15,420.75
81.	K.L. Khan	"	4329	"	"	15,420.75
82.	Sudhanshu Sarkar	"	4432	"	"	13,805.80
83.	Maksud Ansari	"	4548	"	"	11,922.60
84.	R.C. Pandey	"	4480	"	"	15,006.85

For Handling and Taking overcharge Allowance O.T. for L.I.S.C.O. Chas Nala Colliery on 21-1-1986 to continuous

Sl. No.	Name	Designation	P. No.	45 minutes/ day from 21st Jan. 86 to still con- tinuing	Total hrs./ attendances	Total amount	Remarks
1	2	3	4	5	6	7	8
S. Shri						Rs.	
1.	P.C. Mandal	Sr. Overman	9362	45/Mts /day	1599 hrs	14,232.36	
2.	Mithu Mahato	Overman	9375	"	"	14,232.36	
3.	M.B. Dutta	Sr. Overman	9443	"	"	14,232.36	
4.	T.N. Sukla	Sr. Overman	9537	"	"	14,232.36	
5.	S.B. Mukherjees	Sr. Overman	9151	"	"	14,232.36	
6.	Kameshwar Singh	Sr. Overman	9150	"	"	14,232.36	
7.	N.K. Roy	Sr. Overman	9465	"	"	14,232.36	
8.	Yadav Singh	Sr. Overman	9420	"	"	14,232.36	
9.	R.N. Singh	Overman	9430	"	"	14,232.36	
10.	D.N. Mukherjee	Overman	9384	"	"	14,232.36	
11.	Equabai Singh	Overman	9473	"	"	14,232.36	
12.	M.R. Ghosh	Overman	9503	"	"	14,232.36	
13.	A.N. Singh	Sr. Overman	9295	"	"	14,232.36	
14.	K.V. Dhargish	Overman	9674	"	"	14,232.36	
15.	K.K. Bhartia	Overman	9546	"	"	14,232.36	
16.	B/D. Singh	Overman	9133	"	"	14,232.36	
17.	I.A. Khan	Overman	9735	"	"	14,232.36	
18.	Jai Ram Singh	Overman	9709	"	"	14,232.36	
19.	Basist Singh	Overman	9682	"	"	14,232.36	
20.	Sri Dewanand Saw	Overman	9873	"	"	14,232.36	
21.	Madho Mandal	Overman	9784	"	"	14,232.36	
22.	Rameshwar Bari	Mini. Sirdar	9141	"	"	14,232.36	
23.	Ram Badan Bari	M. Sirdar	9609	"	"	14,232.36	
24.	Base Lal Singh	M. Sirdar	9145	"	"	14,232.36	
25.	S.N. Mahato	M. Sirdar	9148	"	"	14,232.36	
26.	M. Khan	M. Sirdar	9730	"	"	14,232.36	
27.	M.D. Hasim	Sirdar	9140	"	"	14,232.36	
28.	S.K. Biswash	"	9439	"	"	14,232.36	
29.	S.P. Kar	"	9469	"	"	14,232.36	
30.	A.K. Dasgupta	"	9441	"	"	14,232.36	
31.	J. Khan	"	9624	"	"	14,232.36	
32.	S.N. Chakraborty	"	9385	"	"	14,232.36	
33.	C.R. Chakraborty	"	9376	"	"	14,232.36	
34.	Razi Kerim	"	9787	"	"	14,232.36	
35.	M. Roy	"	9545	"	"	14,232.36	
36.	Jag Narayan Nishad	"	9146	"	"	14,232.36	
37.	Jhulo Saw	"	9146	"	297 hrs.	7,552.44	Retired
38.	K.L. Chatterjee	"	9732	"	663 Hrs.	5,459.06	V.R.S. on 5-30-5-87
39.	Karmi Mahato	"	9783	"	1599 Hrs.	14,232.36	
40.	Sahadeo Mahato	"	9851	"	"	14,232.36	
41.	Wakil Khan	"	9577	"	"	14,232.36	
42.	Mundrika Singh	"	9848	"	"	14,232.36	
43.	K.L. Mitra	"	9990	"	"	14,232.36	
44.	Niranjan Singh	"	9847	"	"	14,232.36	
45.	R.B. Yadav	"	9983	"	"	14,232.36	
46.	R.B. Singh	"	9792	"	"	14,232.36	
47.	R.N. Pandey	"	9683	"	"	14,232.36	
48.	Shankar Prasad	M. Sirdar	9984	"	"	14,232.36	
49.	S.K. Gupta	"	9872	"	"	14,232.36	
50.	Hem Raj Saw	"	9937	"	"	14,232.36	
51.	Deo Chaman Satnamni	"	9976	"	"	14,232.36	
52.	Maghan Mistry	"	9998	"	"	14,232.36	
53.	P.N. Singh	"	9989	"	"	14,232.36	

1	2	3	4	5	6	7	8
						Rs.	
54. R.C. Chaudhary	M. Si dar	9938	45/Mis./day	1599 hrs.		14,232.36	
55. Shib Lal Mahato	"	9948	"	"		13,232.36	
56. Abdul Hey.	"	9746	"	"		14,232.36	
57. Sakir Ali	"	9499	"	"		13,232.36	
58. R. Goshwami	"	9646	"	"		14,232.36	
59. S.N. Tiwari	"	9975	"	"		13,232.36	
60 N. Chakorbarty	"	9982	"	"		13,232.36	
61. N.N. Chaudhary	"	9852	"	780 Hrs.		6,503	V.R.S. on 31-8-87
62. A.K. Shrivastav	"	9637	"	1494 hrs.		13,220.52	V.R.S. 10-3-89
63. Mahendra Modi	"	9985	"	1599		13,232.36	

नई दिल्ली, 13 जनवरी, 1993

का. भा. 239 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसूचन में, केन्द्रीय सरकार टर्नकाम सेक्टर, बम्बई के प्रबन्धन से सबद्ध नियोक्ताओं और उनके कर्मचारियों के बीच, अनुसूचन में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार, औद्योगिक अधिकांश न. 2 बम्बई के पंचपट को प्रकाशित करता है, जो केन्द्रीय सरकार की 11-1-93 का प्राण हुआ था :

[स. एन-40012/102/88—ख. 2 (वा) (पार्टे)]
के. वी. बी. उन्नी, डेस्क अधिकारी

New Delhi, the 13th January, 1993

S.O. 329.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, No. 2 Bombay as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Telecom Factory, Bombay and their workmen, which was received by the Central Government 11-1-93.

(No. L-40012/102/88-D.II(B)(Pt.)
K. V. B. UNNY, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, BOMBAY

PRESENT :

SHRI P. D. APSHANKAR,
PRESIDING OFFICER

Reference No. CGIT-2/19 of 1989

PARTIES :

Employers in relation to the management of Telecom
Factory, Bombay.

AND

Their Workman

APPEARANCES :

For the Employers.—Shri S. B. Kadam Representative.
For the Workman.—In person.

INDUSTRY : Telecom. STATE : Bombay.
Bombay, dated 21st December, 1992

AWARD

The Central Government by their Order No. L-40012/102/88-D.II(B) dated 13-6-1989 have referred the following Industrial Dispute to this Tribunal for adjudication under Section 10(1)(d) of the Industrial Disputes Act 1947 :

"Whether the action of the management of Telecom Factory in not promoting Mr. K. G. Chodankar, S. No. 8008/31-1(R), Instrument Fitter Gr. I to the post of Instrument Fitter Gr. I (Senior) is legal and justified ? If not, to what relief the workman is entitled and from what date ?"

2. The case of the workman Shri K. G. Chodankar as disclosed from the Statement of claim (Ex. 2) filed on his behalf by the Assistant Secretary of the Ali India P&F Industrial Worker's Union, Telecom Factory Branch, Bombay in short, is thus :

The said workman is serving as Instrument Fitter Gr. I in the Telecom Factory, Bombay. The post of the Instrument fitter grade I (Senior) was created on the recommendation of the Central Trade Review Committee. Accordingly the management had issued the trade test Notice Dt. 19-7-1985. For this trade test the senior workmen from the Relay Assembly Section of Telecom Factory, Bombay were eligible. The said workman was a senior most and experienced among the workmen in the shop.

3. The Union further alleged thus :

The said workman and 4 other persons were suspended by the management on the false charges and the criminal proceedings were instituted against them on the complaint filed by the Management with the Trombay Police Station. However the Metropolitan Magistrate's Court, Vikhroli, acquitted all of them by the Judgment dated 20-9-1986. Thereafter the management withdrew the suspension order dated 20-9-1981, and the said workman and that the four other persons were allowed to resume on duty with effect from 22-9-1986. During the period of suspension the workman and the other 4 persons were prevented from entering into the factory premises. As the said workman was not allowed to enter into the factory premises, he could not get the knowledge and the information about the notice dated 19-7-1985 about the trade test for the post of Instrument Fitter Grade I (Senior). The said Circular was circulated in the shop of the factory for the information of the workmen but the said workman could not get any knowledge about it, as he was then under suspension. That notice was not put on any notice board of the shop or at any other place. As per the provisions of the Factories Act, a notice board is required to be maintained at the main gate of the factory to display all the notices for the information of the suspended employees who are not allowed to enter into the factory premises. However no such notice board was affixed at the main gate of the factory, then. As the said workman was prevented from entering into the factory premises, it was the duty of the management to inform the said workman about the said notice regarding the trade test by other means of communications such

as by hand delivery or through post etc. However the management did not take any steps in the matter. The management had taken a vindictive attitude to prevent the workman from appearing for the said trade test and thus barred his promotional chances. As the workman could not get the knowledge about the said trade test he was deprived of his monetary benefits to the extent of about Rs. 17000.

4. After the workman was allowed to resume duty, a notice dated 9-10-1986 for the trade test was issued by the management. The workman had filed his application dated 16-10-1986 regarding that trade test. However no trade test so far is being conducted by the management, and thereby the workman has been deprived of his promotional chances. The denial by the management to avail the workman of the opportunity for appearing for the trade test has affected the entire service career of the workman and also the period after his retirement. Not only that, but the workman junior to the workman in question were promoted of Instrument Fitter Grade I (Senior) from the year 1985. The union therefore lastly prayed that this Tribunal should direct the management to give the said workman the promotion of the post of Instrument Fitter Grade I (Senior) with all the consequential benefits due from November 1985 and should declare the workman as a senior most employee in the trade of Instrument Fitter Grade I (Senior) in the Relay Assembly Shop No. 31-1 of the Telecom Factory, Bombay and should direct the management to pay him the amount of loss of about Rs. 17000 suffered by the workman due to the initial denial of the said post to him.

5. The management of the Telecom Factory, Bombay, by their Written Statement (Ex. 3) opposed the said claim of the workman, and in substance contended thus :

As per the orders of the Department of Telecommunications dated 10-4-1985 and 4-7-1985, 20% of the posts in the skilled grade were to be upgraded to the Highly Skilled 'B' grade. The posts so upgraded were to be filled up through the workmen of the skilled grade qualifying in the trade test to be conducted according to the rules for conducting the trade test. Accordingly the Telecom factory management had issued an information dated 19-7-1985 inviting applications from Fitter (Inst) Gr. I for selection of candidates through LTTB to fill up the post of Fitter (Inst) Gr. I (senior) in the scale of Rs. 330/480. The last date for the filing of the applications by the intending candidates was 7-8-1985. As per the established practice the said notice was circulated in all the shops of the factory, and the notice was displayed also on the shops notice board and also on the notice board of the shop in which the said workman was working before his suspension. The copy of the said circular was also sent to all the recognised unions including the All India P&T Industrial Workers' Union of which the workman was a member. The purpose of furnishing the copy of the trade test notices to the unions is that the unions should bring the contents of the notices to the knowledge of the workmen so that the eligible workmen may apply for the trade test. The workman who would fail to submit the application within the prescribed date because of his office leave or for any other reason, will lose his chance even though he may be senior person. The said workman Shri Chodankar was under suspension when the said notice was issued. Even though the said notice was duly published, he did not submit his application. The trade test was conducted on 15-11-1985 in which 15 candidates were permitted to appear for the test. As the said workman did not apply for the trade test, he cannot make a grievance about it now. As the said workman did not apply for the said trade test no question of being promoted to that post survives. The selected candidates were promoted to the said post. The management therefore lastly prayed for the rejection of the prayer of the workman.

6. The terms framed at Ex. 4 are :

- (1) Whether the management of the Telecom factory purposely did not bring to the notice of the workman Shri K. G. Chodankar about the 'trade test' in question that was being held on 15-11-1985?
- (2) Whether the said management purposely deprived the workman of his opportunity to appear for the trade test of Instrument Fitter Gr. I (Senior).
- (3) Whether the action of the management of Telecom Factory in not promoting Mr. K. G. Chodankar, S. No. 8008/31-1(R), Instrument Fitter Gr. I to the post of Instrument Fitter Gr. I (Senior) is legal and justified?
- (4) If not, to what relief the workman is entitled, and from what date?
- (5) What Award?

7. My findings on the said Issues are :

- (1) Brought to the notice of his union.
- (2) No.
- (3) Yes.
- (4) Nil.
- (5) As per Award Below.

REASONS

8. The said workman Shri K. G. Chodankar filed his affidavit (Ex. 17) in support of his case, and he was cross-examined on behalf of the management. Shri S. B. Kadam, the Personnel Officer of the management filed his affidavit (Ex. 19) regarding the case of the management, and he was cross-examined on behalf of the workman. After the evidence of both the parties was over, reference was adjourned for submitting the arguments by both the parties. However on the subsequent 4 to 5 days, both the parties remained absent, and as such especially the workman did not advance his arguments even though he had challenged the action in question of the management. Therefore on the basis of the evidence on record, I am coming to the conclusion as follows :

9. The said workman stated and admitted in his cross-examination thus :

"I do not know if the notice boards were affixed in each shop during my suspension period. However the notice boards have been provided to the union by the management, and also the space for affixing them. The Office Secretary of the Union receives the letters from the management. He maintains the record of those records or letters etc. In case we receive some important letters connected with promotion etc. from the management, they are discussed in the union meeting. In case any important decision is taken by the union in the meeting, it is displayed on the notice board."

It is thus quite clear from the different admissions made by the said workman that the management had duly informed the union about the proposed trade test, and as such it was for the union to inform the workman in question about that trade test notice. Therefore there was no fault on the part of the management in not communicating the information regarding the said test of the workman.

10. The management's witness Shri Kadam, the personnel officer, in substance stated in his affidavit and in his cross-examination thus :—

"As per the established practice followed for the last so many years, the notice dated 19-7-1985 regarding the trade test was circulated to all the shops of the factory, and was also displayed on the notice board of shop No. 31/1 in which the said workman was working before his suspension. That notice was also displayed on the main Notice Board of the factory. The copies of that notice were sent to

all the unions, and as such, the wide publicity was given to that notice. Even though the said workman was not allowed to enter into the shops of the factory because of his suspension, the union of which he was a member, was duly informed about the said trade test notice, and as such, it was for the union to bring the contents of that notice to the knowledge of the workman including the workman in question. The workman Shri Chodankar who had failed to apply for that trade test cannot be appointed to the high post of Fitter (Instrument) Grade I (Senior) for which he had never qualified himself."

In his cross-examination the said witness for the management stated thus :—

"The correspondence relating to the workman suspended is given to his union, and is affixed on the notice board. Since the inception of the factory, a notice board has been affixed outside the factory premises at the entrance. There is a visitors' room outside the checking point of the factory. The notices are affixed in that visitors' room also. The suspended workmen have access to that visitors' room."

11. The said witness further stated in his cross-examination thus :

"At present there are about 15 employees on panel for being promoted to the post of Instrument Fitter Grade I (Senior). In case an employee is on panel no trade test is held for him and for others working in that shop. Through mistake a notice was issued on 9-10-1986 regarding the holding of the trade test concerning the employees of that particular shop. Subsequently that notice was cancelled, as some other employees were already placed on the panel for promotion to the said post, and no trade test was conducted in respect of the persons who had applied for the said post in pursuance of that notice."

Thus, it is clear from the different statements made by the witness of the management that as said workman himself did not apply for the said trade test even though the contents of the trade test notice dated 19-7-1985 were duly brought to the notice of his union, and even though the copies of that notice were affixed on different notice boards of the factory. Therefore as the workman himself did not apply for the said trade test, he could not be considered for the post in question. After his suspension order was revoked, another trade test notice dated 9-10-1986 was issued by the management. However, as per the statement of the said witness, that notice was issued only through mistake and hence that notice was cancelled, and no trade test was conducted for the second time. Therefore the said workman could not be promoted to the said post. Therefore there is no intentional denial on the part of the management in promoting the said workman to the post in question and as such the action of the management in question is quite just and fair.

Issues Nos. 1 to 3 are therefore found accordingly.

12. The following Award is, therefore, passed :

AWARD

The action of the management of Telecom Factory in not promoting Mr. K. G. Chodankar, S. No. 8008/31-1(R), Instrument Fitter Gr. I to the post of Instrument Fitter Gr. I (Senior) is just, legal and proper.

The parties to bear their own costs of this reference.

P. D. APSHANKAR, Presiding Officer

नई दिल्ली, 13 जनवरी, 1993

का. आ. 240.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसूचन में, केन्द्रीय सरकार मिल्ड्री फार्म 199 GI/93—7

उपरो, माग्नीथ्रा के प्रबन्धन से संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुसूचन में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिनियम नं. 2 बम्बई के पंचवट का प्रकाशन करता है, जो केन्द्रीय सरकार का 11-1-93 की प्राप्ति हुआ था।

[गं. एल-14012/7/88-ड.2 (बी) (पार्ट I)]

के. वी. बी. उन्नी, डेस्क अधिकारी

New Delhi, the 13th January, 1993

S.O. 240.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal No. 2 Bombay as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Military Farm Depot, Margao and their workmen, which was received by the Central Government on 11-1-93.

[No. L-14012/7/88-D.II(B)(Pt.)]

K. V. B. Unny, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2 BOMBAY

PRESENT :

Shri P.D. Apshankar,
Presiding Officer
Reference No. CGIT-2/2 of 1989

PARTIES :

Employers in relation to the management of Military Farm Depot, Margao.

AND

Their Workmen

APPEARANCES :

For the Employers : Shri G. R. Sharma, Advocate.
For the Workman : No appearance.

INDUSTRY : Defence

STATE : Goa

Bombay dated 4th December, 1992

AWARD

The Central Government by their Order No. L-14012/7/88-D.II(B) dated 16-1-1989 have referred the following Industrial Dispute to this Tribunal for adjudication under Section 10(1)(d) of the Industrial Disputes Act, 1947.

"Whether the action of the management of Military Farm Depot in terminating the services of Shri John L. Fernandes w.e.f. 20-7-1987, is legal and justified ? If not, to what relief and from what date he is entitled ?"

The case of the workman J. L. Fernandes, now deceased, in short is thus :

He was appointed in the services of the Military Farm Depot, Margao, from 4-2-1985 to 20-7-1987 as a Daftry-cum-typist. He was appointed as a Daftry on daily wages of Rs. 14/- per day. However the management terminated his services w.e.f. 20-7-1987. He therefore prayed that the management may be directed to reinstate him in services.

2. The management by their Written Statement (Ex. 3) opposed the said claim of the workman, and in substance contended thus :

This Tribunal has no jurisdiction to entertain and decide the present reference. The said workman was appointed only temporarily on daily wages as a Daftry w.e.f. 4-2-1985; and he was put in service till the regular employee on transfer resumes duty as a Daftry. This was made clear to the workman at the time of his appointment in services. Therefore, as the regular employee on transfer joined his

duty, the services of the workman in question were terminated. Even though the said workman was not entitled to the notice of the retrenchment compensation, the management had offered him the pay in lieu of notice, and also the retrenchment compensation. However the workman himself did not appear before the management to collect the necessary amounts. The management therefore lastly prayed for the rejection of the prayer of the workman.

3. The necessary Issues were framed on the basis of the pleadings of both the parties.

4. The workman filed his affidavit in support of his case at Ex. 5 on 10-10-1990. Therefore, while the reference was at the stage of the cross-examination of the workman, the workman remained absent on 24-1-1991 and on the subsequent dates.

5. The management filed an application on 17-11-1992 (Ex. 8) that the said workman expired on 4-9-1991. The xerox copy of the necessary death certificate has been produced at Ex. 9 issued by the Government of Goa, Directorate of Planning, Statistics and Evaluation, from which it can be seen that the said workman J. L. Fernandes expired on 4-9-1991. Nobody from the family of the deceased workman appeared before this Tribunal requesting that he may be impleaded as a party of the present proceedings and that the reference to proceed with. Therefore as the said workman has already expired on 4-9-1991, the Cause of Action does not now survive. As such the present reference stands disposed of.

P. D. APSHANKAR, Presiding Officer

नई दिल्ली, 13 जनवरी, 1993

का. प्रा. 241 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के प्रत्यक्ष में, केन्द्रीय सरकार भारतीय प्रजापत संस्थान, हापुड़ के प्रबन्धन के संबंध में नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निहित औद्योगिक विवाद के केन्द्रीय सरकार औद्योगिक अधिनियम का प्रकाशन को प्रकाशित करती है, जो केन्द्रीय सरकार को 11-1-93 को प्राप्त हुआ था।

[नं. एल-42012/7/88-D-II (B) (पट्ट)]
के. वी. बी. उन्नी, डेस्क अधिकारी

New Delhi, the 13th January, 1993

S.O. 241.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes, the award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Bhartiya Anaj Sanchyan Sansthan, Hapur, and their workmen, which was received by the Central Government on 11-1-1993.

[No. L-42012/7/88-D-II (B) (Pt.)]
K. V. B UNNY, Desk Officer

ANNEXURE

BEFORE SRI ARJAN DEV, PRESIDING OFFICER,
CENTRAL GOVERNMENT, INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, PANDU NAGAR, KANPUR

Industrial Dispute No. 193 of 1989

In the matter of dispute :

BETWEEN

Sri Iqbal Ahmad S/o Sri Afjal Ahmad, 41 Kothi Gate
Noor Bafan Hapur, District Ghaziabad.

AND

Director Bhartiya Anaj Sanchyan Sansthan, Hapur, District Ghaziabad.

AWARD

1. The Central Government, Ministry of Labour, vide its Notification No. L-42018/7/83-D-II (B) dated 10th August,

1989, has referred the following dispute for adjudication to this Tribunal—

Whether the action of the management of Bhartiya Anaj Sanchyan Sansthan, Hapur, in terminating the services of Sri Iqbal Ahmad S/o Sri Afjal Ahmad, labour, w.e.f. 10-4-86 (a.n.) is justified? If not, to what relief the workman is entitled to?

2. Workman's case in short is that on his name being sponsored by the Employment Exchange, he was appointed as a class IV employee in Bhartiya Anaj Sanchyan Sansthan, Hapur, (hereinafter referred to as Sansthan for brevity), in April 1985. His duties consisted in looking after the guest house, doing chowkidari work, office work and distribution of dak according to the needs. Despite the fact that his work had been satisfactory his services were terminated illegally w.e.f. 10-4-86 (a.n.) by means of office order dated 7-4-86. According to him he had worked for 326 days from May 1985 to April 1986, details of working have been given by him in para 9 of the statement of claim. He alleges violation of the provisions of Section 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947. He was not the junior most at the time of termination of his services. At the time of termination of his services several junior persons including one Sri Shyam Singh had been working. Even after termination of his services a number of persons namely, S/Sri Rafiq, Ashok, Rajendra etc., were appointed by the management. The workman has, therefore, prayed for his reinstatement with full back wages and all consequential benefits with retrospective effect.

3. The management of the Sansthan deny the appointment of the workman as a class IV employee. The management admit that in connection with the engagement of daily wage workers names of some persons including that of the workman were sent by the employment exchange. The workman was selected and accordingly he was engaged as a daily wage worker from April 1985. The management deny that he was entrusted with the job of looking after the guest house or was asked to perform the duties of a watchman or to work in the office of the establishment. In fact none of the duties of a class IV employees was performed by the workman as a daily wage worker. He was entrusted with such work as arose from time to time during his engagement. The management do not dispute the period of working as shown by the workman in para 9 of his claim statement. According to the management, as will be evident from the statement of the workman, the workman was not engaged during all days of the months of June, September and December, 1985 and February, March and April 1986. As and when the requirement of extra hands was not required, the daily wage/casual workers were not engaged. Consequent upon that the workman was not engaged after 10-4-86. However after a couple of months of the impugned order, the management again desired to engage some daily/casual workers and wrote to the Employment Exchange for sending the names of persons interested in the job. A list of names of persons sent by the employment exchange also included the name of the workman. However, the workman did not report for duty. The management deny violation of the provisions of Sections 25-F, 25-G and 25-H of the Act. Lastly, it has been pleaded by the management that the Sansthan is not an 'Industry' under the provisions of Industrial Disputes Act, 1947.

4. In support of their respective cases both sides have led oral as well as documentary evidence. Whereas the workman has examined himself, the management have examined two witnesses, namely, MW-1 Sri (Dr.) Soney Lal, Director of the Sansthan, and MW-2 Sri Mahesh Chand Laboratory Attendant.

5. On the point whether the Sansthan is an Industry or not a preliminary issue was framed on 25-9-90 which was decided against the management on 6-1-1992.

6. The first point to be looked into is whether the workman was engaged as a daily rated casual labour or as a class IV Employee. In para 2 of his statement in cross examination the workman has deposed that his appointment in the Sansthan was as a daily rated casual labour. So this ends the contraversion between parties, on the point.

7. The second point to be considered is whether the workman had worked continuously for one year within the meaning of section 25-B of the I. D. Act, during the period of 12 months preceding the date of termination of his services. Ext. W-4, is the copy of office order dated 7-4-86, by means of which the services of the workman were terminated

w.e.f. 10-4-86 (a.n.). The details of working during the period May 1985 to April 1986 have been given by the workman in para 9 of the claim statement. The number of working days comes to 326 days. He has corroborated this fact that he had worked for the said number of days by means of his affidavit. There has been no cross examination on the point. Even there is no specific denial of it from the side of the Sansthan in the written statement. Even in the affidavit filed by the Sansthan the facts stated by the workman in para 9 of his claim statement has not been disputed, meaning thereby that the management also admit that during the said period the workman had worked for 326 days.

8. It is not the case of the Sansthan that at the time of terminating the services of the workman, he was given one month notice/one month's pay in lieu of notice and paid retrenchment compensation in terms of Section 25-F of the Act. Thus his termination of services is held as null and void.

9. Next I come to the question whether or not the provisions of Section 25-H of the Act were complied with by the Sansthan. In para 10 of the written statement the management have come out with the case that after a few months of the termination of the services of the workman, the Sansthan again desired to engage some daily wage casual labours and for that called for names from the Employment Exchange. The list of persons sent by the Employment Exchange also included the name of the workman but the workman did not report for engagement. Nothing has been alleged in the written statement that any notice in connection with subsequent employment was ever sent by the Sansthan to the workman. For the first time in evidence a case has been built up that under the oral instructions from MW-1, Dr. Soney Lal, Sri Mahesh Chand, Lab. Attendant went to the house of the workman on 21-5-86 for the purpose of intimating him to appear in the Sansthan for his interview.

10. Sri Mahesh Chand, MW-2, has deposed that on reaching the house of the workman he found the main door of the house locked. He therefore, asked a boy living in the neighbourhood of the workman to inform the workman about his interview in the Sansthan that very day.

11. Firstly, this evidence appears to be an after thought and secondly this evidence is of very poor quality, since it is not supported by any documentary evidence from the side of the Sansthan. It appears to me that in order to meet the requirements of section 25-H of the Act, such a case was developed at the stage of evidence under advice from some quarters.

12. Rule 78 of the J. D. (Central) Rules, 1957, lays down that in such a case not only the employer is required to display on a notice board in the premises of the Industrial Establishment details of vacancies but the employers has also to give intimation of the vacancies by registered post to every one of all the retrenched workmen eligible to be therefor. So sending of oral message was not sufficient.

13. Hence, the Sansthan is guilty of breach of provisions of Section 25-H of the Industrial Disputes Act, 1947 also.

14. Hence, from the above findings, the action of the management/Sansthan in terminating the services of the workman Sri Iqbal Ahmad son of Sri Afjal Ahmad w.e.f. 10-4-86 (a.n.) was neither legal nor justified. Consequently he is held entitled to his reinstatement with full back wages and all consequential benefits on his furnishing an affidavit to the effect that he was not gainfully employed during the period he remained out of employment after termination of his services. before the management.

15. Reference is answered accordingly.

ARJAN DEV, Presiding Officer

नई दिल्ली, 13 जनवरी, 1993

का. धा. 242 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, उत्तर रेलवे, लखनऊ के प्रबंधन से संबंधित नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण कानपुर के संघट्ट को प्रकाशित करने है, जो केन्द्रीय सरकार को 11-1-93 को प्राप्त हुआ था।

के संघट्ट को प्रकाशित करने है, जो केन्द्रीय सरकार को 11-1-93 को प्राप्त हुआ था।

[सं. एन.-41012/25/91-आई धार (डू यू) (पार्टे)]

के. वी. बी. उन्नी, डेस्क अधिकारी

New Delhi, the 13th January, 1993

S.O. 242.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Northern Railway, Lucknow and their workmen, which was received by the Central Government on 11-1-1993.

[No. L-41012/25/91-JR (DU) (Pt.)]

K. V. B. UNNY, Desk Officer

ANNEXURE

BEFORE SRI ARJAN DEV PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, PANDU NAGAR KANPUR

Industrial Dispute No. 191 of 1991

In the matter of dispute :

BETWEEN

The Zonal Working President U.R.K.U. 96/196, Roshan Bajaj Lane, Ganesh Ganj, Lucknow.

AND

Senior D.S.E. (C) Northern Railway Lucknow.

AWARD

1. The Central Government Ministry of Labour vide its Notification No. L-41012/25/91.R. (DU) dated 19-11-1991, has referred the following dispute for adjudication to this Tribunal—

Whether the D.S.E. (Construction) Northern Railway Lucknow is justified in not giving benefits of up-grading to Sri Ram Rattan S/o Binda Gangman under PW-1 Umrao w.e.f. 1-4-84 after his seniority was recast? If not, what relief the workman concerned is entitled to?

2. In this case despite availing of several opportunities the Union did not file the claim statement in respect of the workman Sri Ram Rattan. The reference order from the Ministry of Labour was received in the office of the Tribunal on 25-11-1991, and after that 8-1-92, 18-2-92, 6-4-92, 4-6-92, 29-7-92 and 29-2-92 were allowed to the Union for filing the claim statement but the Union failed. On 29-9-92, the case was ordered to come up on 2-12-92. On 2-12-92 none appeared for the Union nor the claim statement filed.

3. Thus from the facts and circumstances of the case stated above, it is clear that the Union is not interested in prosecuting the case. Therefore, a no claim award in the case is given against the Union/workman.

4. Reference is answered accordingly.

ARJAN DEV, Presiding Officer

नई दिल्ली, 13 जनवरी, 1993

का. धा. 243 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, उत्तर रेलवे, लखनऊ के प्रबंधन से संबंधित नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण कानपुर के संघट्ट को प्रकाशित करने है, जो केन्द्रीय सरकार को 11-1-93 को प्राप्त हुआ था।

[सं. एन.-41011/99/89-आई धार (डू यू) (पार्टे)]

के. वी. बी. उन्नी, डेस्क अधिकारी

New Delhi, the 13th January, 1993

S.O. 243.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government

hereby publishes the award of the Central Government Industrial Tribunal Kanpur as shown in the Annexure, industrial dispute between the employees in relation to the management of Northern Railway, Lucknow and their workmen, which was received by the Central Government on 11-1-1993.

[No. L-41011/99/89-IR (DU) (Pt.)]
K. V. B. UNNY, Desk Officer

ANNEXURE

BEFORE SRI ARJAN DEV, PRESIDING OFFICER,
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT PANDU NAGAR, KANPUR

Industrial Dispute No. 186 of 1990

In the matter of dispute :

BETWEEN

The Divisional Secretary U.R.K.U. 96/196 Roshan Bajaj Lane, Ganesh Ganj, Lucknow.

AND

The Divisional Railway Manager Northern Railway Hazarat Ganj, Lucknow.

AWARD

1. The Central Government, Ministry of Labour, vide its Notification No. L-41011/99/89-IR. (D.U.)-D.II (B) dated 22-8-90, has referred the following dispute for adjudication to this Tribunal :—

Whether the D.R.M. Northern Railway, Lucknow was justified in not giving promotion to S/Sri Radhey Shyam and V. S. Pandey, Hospital Attendants to the posts of Clerks in terms of Railway Board's letter No. E (NG)-I-77-CFP-38 dated 4-11-78 ? If not, what relief the workmen are entitled to ?

2. In this case on 17-12-1991, the Union filed affidavits of their witnesses. Thereafter cross examination of the Union's witnesses could not be concluded on one ground or the other. Finally the case was taken on 2-12-1992 for the cross examination of the Union's witnesses, but on that date neither the Union's witnesses nor the authorised representative of the Union were present.

3. It therefore appears to me that the Union is not interested in prosecuting the case any more.

4. Therefore, in the above circumstances, reference is answered against the Union.

5. Reference is decided accordingly.

ARJAN DEV, Presiding Officer

नई दिल्ली, 13 जनवरी, 1993

का. भा. 214 :—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार, उत्तर रेलवे, लखनऊ के प्रबन्धतंत्र के पंचदश नियोजकों और उनके कर्मचारियों के बीच अनुबंध में निहित औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण कानपुर के पंचपट को प्रकाशित करती है, जो केन्द्रीय सरकार को 11-1-93 को प्राप्त हुआ था।

[नं. एल-41011/99/89-IR (DU) (पार्ट)]
क. वी. बी. उन्नी, डेस्क अधिकारी

New Delhi, the 13th January, 1993

S.O. 244.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Kanpur as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Northern Railway, Lucknow and their workmen, which was received by the Central Government on 11-1-1993.

[No. L-41012/30/87-D.II (B) (Pt.)]
K. V. B. UNNY, Desk Officer

ANNEXURE

BEFORE SRI ARJAN DEV, PRESIDING OFFICER,
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT PANDU NAGAR KANPUR

Industrial Dispute No. 126 of 1989

In the matter of dispute :

BETWEEN

The Divisional Secretary Uttar Railway Karamchhari Union 96/196 Roshan Bajaj Lane, Ganesh Ganj, Lucknow.

AND

Senior Prabhagiya Vanijyik Adhikshak Uttar Railway Hazaratganj, Lucknow.

AWARD

1. The Central Government, Ministry of Labour, vide its Notification No. L-41012/30/87-D.II (B) dated 19-5-1989, has referred the following dispute for adjudication to this Tribunal :—

Kya Varishtha Prabhagiya Karmik Adhikari aur Varishtha, Prabhagiya Vanijyik Adhikshak, Uttar Railway, Lucknow, द्वारा केंद्रीय प्रबन्धक, उत्तर रेलवे चरबाघ लखनऊ के अधिन बहरे श्री Salim Beg के उस अवधि के लिये जisme उसने ICW Uttar Railway, Charbagh Lucknow के पास काम किया है varishthata na dene aur uske adhikathi kanistha vyaktiyo द्वारा adhikraman nyayochit hai ? Yadi nahi to sambandhit karmkar kis anutosh ka haqdar hai ?

2. The case of the Union in brief is that the workman Sri Salim Beg was originally recruited under ICW Charbagh on 26-6-73 and he worked under ICW Charbagh upto 7-1-76. After that he was retrenched without compliance of Section 25-F Industrial Disputes Act, 1947. From 8-1-76 he was engaged in the catering department on Lucknow Railway Station where he worked upto 23-6-73. From 24-6-73, his services were again terminated. On 18-5-80, he was again taken as commissioned waiter in the aforesaid catering department unit on which he was regularised on 18-5-88. The Union alleges that he is still working as commissioned waiter and getting regular scale of pay in accordance with the latest decision of the Hon'ble Supreme Court. However he has not been given seniority of the period from 26-6-73 to 7-1-76 and of the period 8-1-76 to 23-6-76 as a result of which he has been superseded by a number of his juniors. The Union has, therefore, prayed that the above service period be counted towards his seniority.

3. The case is contested by the management. The management plead that the management are not in possession of the record of the period which the Union wants to be counted for the purposes of determining the seniority of the workman. As such the Union is put to strict proof of the same. The management further plead that Sri Salim Beg does not come within the meaning/definition of workman as given in Industrial Disputes Act, 1947. In fact he was engaged as a Commission Bearer under the Manager Catering Department, Northern Railway, Lucknow. As such Sri Salim Beg has no legal right to claim any relief in this case. However, several Commission Bearers approached the Hon'ble Supreme Court of India under Article 32 of the Indian Constitution for regularisation of their services and the said dispute is still pending before the said court and as such this court has no jurisdiction to adjudicate on the matter in dispute. Further the railway administration in compliance of the order of the Hon'ble Supreme Court passed on the stay applications, has started paying salary to the Commission Bearers at the same rate as salaried bearers of the Railway Catering.

4. In support of its case, the Union has examined the workman. On the other hand, in support of their case the management filed the affidavit of Sri Mushtaq Ali, senior clerk D.R.W. Office Lucknow, but did not produce him for cross examination despite giving of several opportunities for the same by the Court.

5. The workman has deposed that he had worked as a casual labour under ICW Charbagh Lucknow from 26-6-73 to 7-1-76 and had further worked as a Khalasi at Lucknow

Railway Station under Catering Manager Lucknow from 8-1-76 to 23-6-76. In para (1) of his affidavit he has referred to the photostat copy of his casual labour card filed by the Union. The casual labour card shows that the workman had worked as a Khalasi from 26-6-73 to 7-1-76. As regards the other period of his working under the catering department Lucknow Railway Station there is no documentary proof from the side of the Union. Although there is no evidence from the side of the management, in the absence of any documentary evidence, it would not be safe for the Court to rely upon the statement of the workman. Hence it is held that he had worked as a casual labour under IOW Charbagh from 26-1-73 to 7-1-76 as per details given in the copy of the casual labour card intermitantly.

6. In para (3) of his affidavit it has been deposed by the workman that he was again taken on roll as a commission bearer at Lucknow Railway Station on 15-12-80, which post has been held as equal to that of a bearer in the catering organisation by the Hon'ble Supreme Court. The same fact was stated by him in his cross examination.

7. From the side of the Union an unattested copy of judgment dated 27-2-90 of the Hon'ble Supreme Court in writ petitions (C) Nos. 2275-86 of 1986 mis. and Special Leave Petition (C) No. 4090 of 1985, has been referred. From the judgment it appears that the Hon'ble Supreme Court dealt with three types of contention—

- (1) Statutory Canteen
- (2) Non-statutory recognised canteen
- (3) Non Statutory non recognised canteens

About the first Aid of canteens it was held by the Hon'ble Supreme Court of India that the employees of these canteens will have to be treated as railway servants. With regard to the second type of canteens it was held by the Hon'ble Court that the employees of these canteens should be treated as par with that of the employees in the statutory canteens and they should also be treated for all purposes as railway servants. With regard to the third kind of canteens it was held by the Hon'ble Court that the workers engaged in these canteens are not entitled to claim status of the railway servants. From the operative portion of the order it appears that the Railway Board has already treated the employees of all the Statutory canteens and 11 Delhi based non statutory recognised canteens as railway employees w.e.f. October 22, 1980. The Hon'ble Supreme Court accordingly held that the employees of other non statutory recognised canteens will however, be treated as railway employees w.e.f. April 1, 1990. As such they would be entitled to all the bonafides as railway employees w.e.f. from the said date according to the service conditions prescribed for them under the relevant Rules/Orders.

8. There is no evidence from the side of the Union to show as to which kind of canteen the workman belongs. Statutory canteens are those which are provided for the workers under the Factory Act. The case of the workman, therefore, will fall in one of the two remaining categories of canteens. Even if it is held that his case falls under non statutory recognised canteen his claim as a railway employee would be from April 1, 1990 and not from before as has been held by the Hon'ble Supreme Court, although it is held by the Union in the claim statement that the workman was regularised w.e.f. 18-5-88.

9. Therefore, Sri Salim Beg, present workman becomes a railway employee only w.e.f. April 1, 1990 or as has been alleged by the Union w.e.f. 18-5-88. The question of counting services rendered by him previously in different capacity (Casual Labour/Khalasi) does not arise at all as the post of Khalasi and Commission Bearer are two different kinds of posts and cannot be equated at all.

10. From the side of the Union copy of Chapter XXV of the Railway Establishment Manual on casual Labour has also been brought to my notice. I have gone through it and find nothing as would entitle Sri Salim Beg to the counting of previous service rendered by him for the purposes of fixing his seniority etc.

11. Hence Reference is decided accordingly, against the Union/workman.

ARJAN DEV, Presiding Officer

नई दिल्ली, 15 जनवरी, 1993

वा. डा. 245—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) का धारा 17 के अनुसूचण में, केन्द्रिय सरकार इंडियन एयरलाइन्स बॉम्बे के प्रबन्धन से संबंधित नियोजकों और उनके कर्मचारियों के बीच, अनुसूचण में निर्दिष्ट औद्योगिक विवाद में केन्द्रिय सरकार औद्योगिक अधिकांश, कलकत्ता के पक्ष पर प्रकाशित करता है, जो केन्द्रिय सरकार का 9-12-92 का प्राप्त हुमा था।

[संख्या एल-11012/13/87—डी II बी]

बी. एम. डेविड, डेस्क अधिकारी

New Delhi, the 15th January, 1993

S.O. 245.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Calcutta as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Indian Airlines, Bombay and their workmen, which was received by the Central Government on the 9-12-92.

[No. L-11012/13/87-D.II(B)]

B. M. DAVID, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT CALCUTTA

Reference No. 150 of 1988

PARTIES :

Employers in relation to the management of Indian Airlines Bombay.

AND

Their Workman

PRESENT :

Mr. Justice Manash Nath Roy,
Presiding Officer.

APPEARANCES :

On behalf of Management : Mr. R. N. Mazumdar, Advocate.

On behalf of Workman : Mr. M. S. Dutta, Advocate.
STATE : West Bengal INDUSTRY : Airlines

AWARD

The validity, bonafide or otherwise of the action of the Management of the Indian Airlines, Bombay, in relation to the Engineering Department at Bombay, in terminating the services of Sri Bikash Dutta (hereinafter referred to as the said employee), an Aircraft Technician, with effect from August 14, 1981, was referred for adjudication before this Tribunal by the Government of India, Ministry of Labour by Order No. L-11012/13/87-D.II(B) dated July 28, 1988. The reference was made under section 10(1)(d)(2A) of the Industrial Disputes Act, 1947 (hereinafter referred to as the said Act).

2. In his written statement, the said employee has stated that he was appointed in the concerned Airlines (hereinafter referred as the said Airlines), as an Aircraft Technician (Maintenance) on and from March 6, 1980. The appointment letter has been marked as Ex. M-1 and Clause 3 of the said exhibit which states "if your work, conduct and ability is not upto the standard required by us, your probationary period may be extended or your services may be terminated without assigning any reason therefor." The above Clause 3 has been quoted, since submissions amongst others were made at the bar, on the basis thereof or the action as taken, for the infraction of the same. From Exhibit M-1, it would appear that the said employee accepted the terms and conditions as stated in the said letter of offer Ext. M-1, without any reservation. The said employee has said that his service records were clean and meritorious and he discharged his duties to the full satisfaction of the said Airlines. But, unfortunately,

all on a sudden, by Ext. M-4 dated August 5, 1981, his services were terminated without assigning any reason. It should be noted here that it would appear from Ext. M-2, and M-3, which are dated October 3, 1980 and March 18, 1981 respectively that the said employee was asked for his interest, to improve his performance of attendance. Immediately on receiving the said Ext. M-4, the said employee by his representation in Ext. M-5, to the Regional Director of the said Airlines, requested to reinstate him in the services and for the grounds as stated therein. On a reference to Ext. M-5, it will also appear that the said employee was conscious of his short-falls, regarding attendance or the poor attendance of him, as alleged by Exts. M-2 and M-3.

3. It was the case of the said employee that thereafter by Ext. W-3, his representation as aforesaid, was found to be not justified and so, consideration of his representation was refused. Then, by letter of February 6, 1982 Annexure 'E' to the written statement, the said employee preferred another appeal to the Director of Engineering of the said Airlines, for reinstating him in his services and he has alleged that no reply was received to the same, as a result whereof, he approached the Regional Labour Commission(C), Bombay, by a letter of May 22, 1984, which has been disclosed as Annexure 'F' to the Written Statement. The above statement was not correct as in answer to Annexure 'E', he was given a reply by Ext. M-7, rejecting the Appeal and by the Annexure 'F' he intended to raise a dispute against his termination of services, which he has claimed to be illegal and in violation of the provisions of the said Act. It would appear from Annexure 'F' of the written statement of the said employee that the Assistant Labour Commissioner concerned, enclosing therewith the letter as in Ext. M-20, which was filed by the said Airlines before the said Assistant Labour Commissioner, asked the said employee to submit his rejoinder, which he did, by his letter dated August 24, 1984, as disclosed in Annexure 'G' to the written statement and he categorically claimed that his termination was made illegally, malafide, unauthorised and the same was unjustified. The said Airlines, as would appear from Ext. M-21, filed a rejoinder dated October 25, 1985, which according to the said employee, was evasive one, and by that, extraneous matter were sought to be incorporated. The said employee claimed further that, before issuing the termination letter to him, neither any charge sheet was issued nor any enquiry was held for any misconduct and the termination, as was effected in his case would be a case of "retrenchment" as defined in section 2(oo) of the said Act. He further claimed that before effecting such retrenchment, he was neither paid any retrenchment compensation nor Notice Pay, which according to him, was a condition precedent to retrenchment, in terms of section 25F of the said Act. He specifically claimed that such compensation or notice pay, not having been paid, the said Airlines violated the mandatory provisions of section 25F of the said Act and the termination of his services by way of simple notice, was improper and in any event, he could not have been terminated in the manner as was done, as he admittedly completed 240 days of service in a year. For non compliance with the conditions precedent for retrenchment, as in section 25F of the said Act, the action as taken was also claimed to be void ab initio. It has further been claimed that it was encumbrance on the said Airlines, to pay the said employee one month's wages in lieu of notice i.e. for the period of notice and such act should have been taken before actual retrenchment was effected.

4. The said employee has said that because of the adamant attitude and actions of the said Airlines, the conciliation proceedings failed and for that, the Reference as in this case was made.

5. In fact, in the facts of this case, the said employee has claimed that this Tribunal should return a verdict in his favour, holding the retrenchment to be invalid, inoperative and void and also to direct his reinstatement, with full back wages, considering him to be in continuous service, along with other incidental and consequential benefits. It should be noted and that, subsequently the above prayer for reinstatement was not strictly adhered to.

6. The said Airlines filed their Written Statement dated January 19, 1989, on January 20, 1989, stating the Reference to be not maintainable, as the same was made under Section 10 of the said Act in respect of an Individual work-

man and furthermore, since the dispute was not espoused or sponsored by a Union or by of appreciable number of workmen. This claim of the said Airlines appears to be not justifiably maintainable and to be futile and there was also no justification in the said Airlines's claim that since the Reference was not made under Section 2A of the said Act, the dispute could not assume the character of Industrial Dispute. The Reference was also claimed to be invalid, because of the staleness of the same and more particularly when, the conciliation machinery was approached, after more than two and half years from the date of termination of the said employee. These submissions also, in view of the facts of this case, were without any basis.

7. There was no dispute raised regarding the appointment of the said employee or the date thereof, but it was claimed that the said employee having accepted the employment in the manner as indicated in Ext. M-1 and in view of the election of acceptance as made by him, was bound by the terms of the said appointment letter, clause 2 whereof shows that the said employee was to remain on probation, for a period of 6 months and in terms of clause 3 as aforesaid, such offer or appointment was valid, if the work, conduct and ability of the said employee, was upto the mark and if the same was not so or upto the standard required by the said Airlines, the probationary period was liable to be extended or the services of the said employee could be terminated, without any reason therefor. The said Airlines have agreed that the said employee joined the services on March 6, 1980 and has alleged that immediately after few months of his joining, his attendance was found to be poor. It has further been indicated that on July 12, 1980, the said employee was found absent in his work spot, for 4 hours, for which he was also warned by an order of the Chief Engineering Manager, Bombay. The said order has been produced as Ext. M-9, subject to objection. That exhibit would show that the initial probationary period of the said employee was for 6 months. He took 10 days casual and one day's special leave on May 1980. In June 1980, he took one day's special leave and one day's earned leave, apart from being absent for 4 hours from his duty, as mentioned above, on July 12, 1980. It was the case of the said Airlines that in view of the above, the attendance of the said employee was found to be poor and after making a proper assessment, his probationary period was extended by 6 months, with effect from September 6, 1980, by an order dated October 3, 1980. The above record has been marked as Ext. M-10. It has further been alleged that inspite of such extension of the probationary period and the opportunities as received, the said employee did not improve his performance and his progress and attendance was again found to be poor, for the continuing phase of the probationary period of 6 months. In paragraph 7 of the Written Statement, the particulars of the attendance of the said employee from September 1980 to February 1981 have been indicated by the said Airlines. Such picture of attendance as indicated, certainly showed poor attendance of the said employee, yet, the said Airlines has stated that after considering the ability, conduct and progress, his performance was found to be poor and after such assessment and since the performance was found to be unsatisfactory and poor, the probationary period of the said employee was further extended for a period of 3 months, with effect from March 6, 1981, by order dated March 18, 1981, so that, he could, in his own interest, improve the performance. The aforesaid records have been marked as Exts. M-11 and M-3.

8. The said Airlines has stated that thereafter, because of failure on the part of the said employee, to improve his attendance and for unsatisfactory services, his services were terminated by a letter of August 5, 1981, in terms of clause 3 of Ext. M-1. This order has been marked as Ext. M-4. Against such order in Ext. M-4, the said employee preferred an appeal on August 10, 1981, to the Regional Director, Bombay of the said Airlines, who, after going through the appeal, as well as the relevant records, rejected the same, by an order dated September 7, 1981, which has been marked as Ext. W-3.

9. In view of the above, the said Airlines, have submitted that the termination order was duly issued against the said employee, after giving him repeated opportunities to have his performance improved, but, he could not be confirmed, as there was no improvement of his performance. Affording

of such opportunities, according to the said Airlines, just fit in with the principles of natural justice and as such, it was claimed that the said employee could not make out any case for not affording him due opportunities or for any violation of principles of natural justice.

10. On stating the above facts, the statements as contained in the several paragraphs of the Written Statement of the said employee, have been denied seriatim and the said Airlines have further submitted that in the event, it is found by this Tribunal that the order of termination of the said employee was punitive in nature and the said Airlines should have taken a departmental enquiry proceedings against him, to justify the action, they should be given liberty to adduce evidence on that point or to justify the action as taken.

11. There was a rejoinder dated March 13, 1989, filed by the said employee, wherein, the material allegations on facts, have been sought to be denied and reference has further been made to some case laws, to justify the case of the said employee and more particularly, to establish that the said Airlines did not act duly and in good faith, in imposing the punishment on him.

12. Sri Arup Kumar Srivastava, who on the date of his evidence, was the Deputy Manager, Personnel Services and posted at Bombay, has deposed as MW-1. He was initially appointed after training, as Personnel Officer, Calcutta with effect from April 4, 1978 and thereafter, on several promotions, he was transferred to Bombay as Deputy Manager, Personnel Services and assumed his office on May 7, 1990. He has deposed that the services of the officers of the said Airlines are transferable to any part of India. As indicated earlier, he deposed as Deputy Manager, Personnel Services at Bombay. It was his case that he got himself acquainted with the facts from the case records, which originally pertained to Western Region of the said Airlines at Bombay. It was his evidence that the Reference in this case was made at the instance of the said employee. He proved Ext. M-1 and so also the contents thereof. He laid special emphasis on the standard of work, which is required from an employee of the said Airlines and has stated, in the case of any short-fall, probationary period may be extended or the employee concerned, may be terminated, without showing any reason. He has also produced Ext. M-8, the Service Regulations of the said Airlines and specifically stated that, from the endorsement in Ext. M-1, it would appear that the said employee accepted the terms and conditions as mentioned, without any objection. He has stated, by Ext. M-2, the said employee was informed about his short falls during the probationary period and he has also deposed, regarding extension of probationary period, as given to the said employee, with due caution, for improving his conduct. It was his further case that the concerned exhibits in this respect, were duly communicated to the said employee. It was the further evidence of this witness that by Ext. M-9, the Head of the Department of the said employee warned him, since he did not perform the concerned duty as allotted to him and as indicated earlier. This exhibit was objected to, since MW-1 was not the signatory of the same. The witness has of course stated that Ext. M-9 was signed by the Chief Engineering Manager, who was no longer in service and he could not remember his name. The reference to this exhibit has been made in paragraph 6 of the said Airlines's Written Statement, which paragraph has been dealt with, in paragraph 7 of the rejoinder of the said employee. But strangely enough, he has not taken any exception duly, to the contents of the said exhibit, although the admissibility of Ext. M-9 was objected to. As such, I find that there is really no basis for the objection as taken now. Exts M-10 and M-11 and M-12 are on the confirmation or the progress of the said employee and mentioned by the said Airlines. The admissibility of M-10 was objected to, but not those of the other two exhibits. The report as disclosed, certainly establish poor attendance of the said employee. Ext. M-13 which was marked subject to objection, is the record, showing attendance of the said employee during his probationary period, as extended. This record has been mentioned by the said Airlines and according to MW-1, in the usual course of business and considering the records, the view was formed that the attendance of the said employee was not regular. The picture of attendance as shown from this record Ext. M-13 and so also Exts. M-10 and M-12, do not inspire much confidence and on construction and con-

sideration of them, it cannot, but and should be held that the attendance of the said employee was very poor and in his representation dated August 19, 1981, marked Ext. M-5, he has really agreed that he was guilty of such short falls, as indicated. In fact, he has unequivocally admitted his poor attendance, but, has given some reasons in justification thereof. Chapter VIII of Ext. M-8 deals with leave regulations in respect of the employees of the said Airlines and it has been stated that the document dated August 4, 1981, was duly initiated by the then Deputy Manager, whereby, he placed the case of the said employee before the Chief Engineering Manager, for necessary consideration and advice. The signature of the signatory of this document was identified by the witness. This document has been marked as Ext. M-4, which is also marked as Ext. W-2. The witness has stated that the workings of the said employee did not improve and as such, he should be terminated with immediate effect. Such order of termination was admittedly communicated by Ext. W-2. From Ext. M-15, which was marked subject to objection, it would appear that the Finance Manager of the said Airlines, is writing to the Chief Engineering Manager that the said employee would not be entitled to his wages for 25 days in June and July 1981 and by Ext. M-16, which was from the Deputy Manager of the Personnel Services to the said employee, it was communicated that a sum of Rs. 813.79 p was recoverable from him, because of his absence. A letter dated March 4, 1982, to the Deputy Manager, Calcutta, from the Inter State Security Agency was produced by this witness, to show that the said employee was otherwise gainfully engaged. This has been marked as 'X' for identification. But thereafter, the same has not been duly proved or brought in evidence.

13. Mr. Mazumdar, contended that even if sub-section (bb) of section 2(o) was incorporated in 1986 and the same was not retrospective, when the dispute, although took place earlier, but the Reference was made in 1987 i.e. long after the action as taken, so, such dispute should be governed by the law as it stood on the date of Reference and incorporation of Section 2(o) sub-section 2(bb). In support of such submission, he referred to the case of the Workmen of M/s. Firestone Tyres and Rubber Co. of India Ltd. Vs. The Management of Ors., 1973 Lab. I.C. 851. This determination in my view, in no way, helps the said Airlines.

14. It is true, as submitted by Mr. Majumdar that the said employee accepted the offer of employment without any exception, so his acceptance was subject to and guided by clauses 1, 2 and 3 of Ext. M-1, and his terms of service and conditions of employment were guided by Ext. M-8. This Ext. M-8 also, had and has statutory force, as the same was framed and formulated under or in terms of section 45(2)(b) of the Air Corporation Act, 1953, with the previous approval of the Central Government. The said Regulation was meant for the employees in the Aircraft Engineering Department, to which the said employees admittedly belonged. Clause 9 of Ext. M-1 speaks of undergoing a period of probation as indicated therein and Technicians like the said employee, as the said employee was, would come under Appendix I. The period of probation, of the respective category of employees, are not really specific to the extent that they may be extended or relaxed at the discretion of the Chairman. In clause 5 of Ext. M-5, it has also been indicated that if any question arises as to the interpretation of the Regulations, the same shall be decided by the Corporation. Mr. Mazumdar, in my view, was right and justified in contending that the said employee was then, duly and actually bound by the Regulations, Ext. M-8.

15. The progress reports of the said employee have been exhibited as Exts. M-10, M-11, M-12 and M-13, which were sought to be produced and proved through MWs. 1 and 2. They, on the basis of such reports, formed the idea about the performance, which also includes the attendance of the said employee, to be poor and very poor. It was pointed out by Mr. Mazumdar that in view of his unequivocal admissions in Exts. M-5 and M-6, the said employee cannot resile from the fact that there were such shortfalls in his workings as disclosed through Exts. M-10, M-11, M-12 and M-13 and in fact, he has admitted and accepted such shortfalls in his workings. It was his further submission that the whole question in this case, would thus be, on the basis of the records as disclosed, if the case of the said employee, who was admit

tedly a Probationer, would come under section 2(n) of the said Act or as such, the same would come under section 25G of the said Act and further, if section 25G applies to a Probationer.

16. Ext. M-4 is the letter terminating the probationary services of the said employee and with the said Exhibit, a cheque for the sum of Rs. 425, representing 30 days basic pay of the said employee in lieu of notice, was said to be enclosed, which fact was perhaps not correct, as the copy of the said Exhibit as addressed to the Financial Manager of the said Airlines shows that he was asked to draw a cheque for the equal amount in favour of the said employee and to send the same to the Chief Engineer concerned, so that, the same could be delivered along with the letter. This exhibit (perhaps the original), has been marked Ext. W-2. But, in this original, nothing is mentioned regarding enclosing of the cheque. Since the aforesaid two exhibits were the same and of the same date, so, there is every possibility that the cheque for the like amount, was not enclosed. The above fact will get support from Ext. M-16, which shows that a cheque for Rs. 392.39p, after adjustment of the outstanding from the said employee, was sent on August 7, 1981. Mr. Mazumder submitted, in the background and since, according to him, a Probationer, which the said employee was, was not entitled to a notice of retrenchment, as, his case as such was not a case of retrenchment, there was no illegality in the action as proposed and taken. In support of his contentions, he made reference to the case of K. K. Barot etc. Vs. State of Gujarat, 1992(1) L.J. 473, which decision states that Probationer does not get confirmation, unless there is specific order of confirmation or termination and even the services are terminated by giving notice falling short of what is required in the order of appointment, termination does not become illegal and void and the employee then, would be paid salary in lieu of such notice. It was further submitted by Mr. Mazumder, in view of Ext. M-1, the said employee was also not entitled to any notice as aforesaid.

17. The appeal as filed by the said employee on February 1982, was turned down and refused on April 1982 and the steps for raising the dispute having been raised on May 22, 1984, Mr. Mazumder claimed the Reference to be bad for such delayed expousal. I have already indicated earlier that there is not much substance in such submissions. More particularly when, no period of limitation is duly and specifically prescribed under the said Act for raising a dispute of the present nature. It is also reasonably expected that when a person is terminated, he may require some time to decide about his course of action and more particularly when, he will have to fight his cause against an opponent like the said Airlines and that apart, the mental agony, which must have suffered by the said employee, will have to be considered, which also took some time for him to decide the action to be taken.

18. Mr. Mazumder contended that the mere fact that the said employee has served the said Airlines for 240 days or more, will not entitle him the reliefs as asked for. While on this point, he referred to and relied on the determinations, in the case of Delhi Development Horticulture Employees' Union-Vs-Delhi Administration, Delhi & Ors., A.I.R. 1992 S. C. 789. There, the question of regularisation of persons putting in more than 240 days of service and employed under a Scheme, came up for consideration and it has been indicated that such claim for regularisation will not be tenable only because those persons have put in such number of days of service as indicated. This decision, in terms, will not apply in this case, as, here, the said employee was a Probationer and not employed under a scheme. It should also be noted that the Reference by or at the instance, of Employment Exchange, was not in issue in this case.

19. While on the issue of Probationer, further reference was made by Mazumder to the case of Hari Singh Mann-Vs- State of Punjab & Ors., A.I.R. 1974 S.C. 2265. There, the Supreme Court has indicated that the object of extending the period of probation is to find out whether the employee is a fit person. He cannot be confirmed till the person is on probation or within the extended period of probation, to find out his fitness and this can not be given effect, till the probationary period has expired. Therefore, he could not be held to have been stood confirmed before the period of probation has expired. On the basis of the above decision, which according to Mr. Mazumder, duly fits in, with the facts of the case, the said employee could not claim to be engaged or absorbed, as

his working capacities in the probationary period, were not duly proved to be satisfactory. He further claimed that to find out, if a probationer has completed the probationary period duly, is a management's function and as such, ordinarily, the use of such discretion or satisfaction or otherwise, should not be interfered with. He of course argued that the Tribunal can interfere, if perversity in the action is proved and established, which test, according to him, has not been satisfied in this case.

20. The termination of probationary period in this case, was also claimed by Mr. Mazumder, to be termination simpliciter and not a punitive one and as such also, he claimed that no interference should be made or is required to be made by this Tribunal. To establish and supplement his submissions, he made reference to the case of Oil and Natural Gas Commission & Ors.-Vs-Dr. Md. Israr Ali, A.I.R. 1980 S. C. 1242. In that case, the history of service of the probationer in a temporary post, showed that his work was never satisfactory and he was not found suitable for retention in services and for that reason, even though some sort of enquiry was started, the same was not proceeded with and no punishment was imposed and in such circumstances, the appointing authority considered it expedient, to terminate the services of the Probationer and it has been indicated that the same could not be said to be an order of termination, attracting Article 311, as the appointing authority had the authority and right to terminate the services without assigning any reason. It has further been observed that in such a case, even if misconduct, negligence and inefficiency might be the motive or the inducing factors, which influenced the employer to terminate the services of the employee, a power which the employer undoubtedly possessed, even so, as under the terms of appointment of the employee, such a power flowed from the contract of service and thus termination of service, could not be termed as penalty or punishment. It has also been indicated that further remarks in the assessment roll and recommendations therein, to extend the probationary period, could not be said to indicate that the intention of the appointing authority, was to proceed against the employee by way of punishment. Mr. Mazumder claimed that the above decision would apply fairly and squarely in the facts of the present case, as here, the said employee's probationary period was not extended for the shortfalls as indicated and his termination of probationary period, was just an order of termination simpliciter and was not by way of punishment. He indicated that even then, in this case, the said Airlines duly and bonafide gave the said employee much opportunities to improve his workings, which he did not admittedly availed.

21. In the facts of this case, Mr. Mazumdar also submitted that the said employee could not even be deemed to be or have been confirmed. In support of his submissions, he referred to the case of State of Maharashtra Vs. Veerappa R. Sabuji and Anr., A.I.R. 1980 S.C. 42, a case, where Rule 4(2) (iv) of the Bombay Judicial Services Recruitment Rules, 1956, was considered and it has been indicated that the continuation of a Judicial Officer, belonging to Junior Branch, Class-II, in service, after probation, cannot be deemed to be a case of automatic confirmations. That Bombay Rule, the Supreme Court has indicated, has two parts viz. that (i) it is imperative to put every judicial officer appointed under Sub. rule (2) on probation, for a minimum period of two years "unless otherwise expressly decided and (2) on the expiry of the said period of two years, the person appointed, may be confirmed if there is a vacancy and if his work is found to be satisfactory. It has been indicated that the plain meaning of the Rule is that there is no automatic confirmation on the expiry of the probationary period of two years in the first instance. As such, Mr. Mazumdar pointed out that here also, the said employee had no right to be automatically confirmed and he was bound by the terms in Ext. M-1. In support of his submissions, since the order in this case, was a termination simpliciter of the probationary period of the said employee, so no interference should or need be made, reference was made to the case of the Union of India & Ors. Vs. P. S. Bhatt, A.I.R. 1981 S.C. 957, in which case, the employee concerned was appointed as Announcer in the All India Radio. He was selected by direct appointment, for the post of probation and was appointed as such on probation. While he was on probation, he was reverted to the post of Announcer. He alleged that the motive behind the order was that he had indulged in loose talks and had used filthy language against his seniors, which was tape recorded and sent to the Station Director.

The order was held to be an order of termination of the employment on probation simpliciter and reversion to the old post, without attaching any stigma. It has further been indicated that the law in relation to termination of the services of an employee on probation, is well settled. If any order terminating the services of a probationer is an order of termination simpliciter, without attaching any stigma to him and if the order is not an order by way of punishment, there will be no question of the application of the provisions of Article 311. Mr. Mazumder contended that such principles can be applied in this case with all force and efficiency.

22. Mr. Mazumder further indicated that since the said employee is now gainfully engaged, so also, no interference can or should be made. Such submissions, although with great substance, cannot be looked into or considered, as, such gainful employment of the said employee as alleged and pointed out, has not been duly and legally proved and established.

23. Mr. Dutta submitted that the said employee, in the facts of this case, should get the benefits of his services and also of the successive extension of the probationary period and as such, he should be deemed to be in continuous service. He further indicated that continuous service or the fact that he is not duly terminated, will appear from the notice Ext. W-2, along with which, admittedly, the relevant dues of the said employee or the payments to be received by him, have not been paid or tendered. He also indicated that there was in fact, no due termination of the services of the said employee, on the basis of the said Ext. W-2, as admittedly, Clause 13 of Ext. M-8, which specifically postulates that the services of the employees are terminable on 30 days notice on either side or basic pay in lieu was not admittedly complied with. He also pointed out that the adjustment as indicated in Ext. M-16, was neither possible nor permissible in this case. He contended further that the termination of the probationer on the ground of unsuitability will come within the definition of retrenchment as in section 2(oo) of the said Act. In support of such submissions, reference was made by him to the case of Management of Karnataka State Road Transport Corporation, Bangalore Vs. Boriah M. & Anr., 1964 (1) LLJ 110, where the Karnataka Road Transport Corporation terminated the services of some of the employees during the extended period of probation on the ground of unsuitability. On Reference, the Labour Court overruled the employer's plea that section 25F of the said Act had no application and so the discharge was valid. On challenge, the High Court maintained the same view and while dismissing a further Appeal, the Supreme Court has observed that once the conclusion is reached that retrenchment as defined in Section 2(oo) covers every case of the termination of service, except those which have been embodied in the definition, discharge from employment or termination of service of a probationer would also amount to retrenchment. It has been indicated, admittedly, the requirements of section 25F had not been complied with in the cases and very necessary consequences of non compliance of section 25F, in a case, where it applied made the order of termination void.

24. While on the point, Mr. Dutta made a specific and heavy reliance on the case of Punjab Land Development and Reclamation Corporation Ltd., Chandigarh Vs. Presiding Officer, Labour Court, Chandigarh, 1990 (2) LLJ 70, where the question was whether the expression 'retrenchment' is to be interpreted only to mean the discharge of surplus labour and exclude from its ambit, discharge of services of workmen for any reason whatsoever, other than those expressly excluded by the definition in section 2(oo) of the said Act. It was contended before the Labour Court that such definition means termination of the services of workmen for any reason whatsoever otherwise than those expressly excluded by the definition in section 2(oo) and the employees contended to the contrary and to the effect that it means termination of services of workmen only by way of surplus labour for any reason whatsoever other than those expressly excluded by the definition in section 2(oo). Such contention as raised, was negatived holding, contemporaneous exposition of any definition is worth consideration. It is the best and strongest in the law. A statute is best explained by following the construction put up by Judges, who

lived at the time it was made. Applying all and the various tests, principles and precedents to the definition in Section 2(oo), it has been observed that the expression "retrenchment" means termination by the employer of the services of a workman for any reason whatsoever, except those expressly excluded in the section. Mr. Dutta, of course fairly stated that the said employee, in the facts of the case, is not asking for confirmation. Mr. Mazumder of course claimed that this case will come within the exceptions in sub-clause (bb) of Section 2(oo) of the said Act. The above sub-clause was incorporated with effect from August 18, 1984. On the submissions, a point arose, whether the above sub-clause of Section 2(oo) is retrospective or prospective? Mr. Dutta argued that this was not a case of punishment. So the question would be, if the termination was for non renewal of the contract in terms of Ext. M-1. There was claims and counter claims on the point and Mr. Mazumdar indicated, the case here, was one of non renewal of the contract of a probationer, in the circumstances as indicated and therefore, the determinations in 1984 (1) LLJ 110, will have no application.

25. Mr. Dutta agreed that Ext. M-8 was a statutory Rule and he claimed, there was violation of the same. He pointed out the provisions of paragraph 13 of the said Rules and submitted that there was admitted infraction of the same, as the said employee was neither given 30 days notice nor was paid his Basic pay, in lieu thereof. In fact, he claimed that was the mode of terminating the services of the said employee. To bring home, his submissions on the above basis that the termination was bad for non-compliance with the statutory Rules, Mr. Dutta referred to the case of L. Robert D'Souza Vs. Executive Engineer, Southern Railway and Anr., 1982(1) LLJ 330, which was a case on retrenchment and what amounts to retrenchment. It has been held there, that the expression retrenchment in section 2(oo) is so clear and unambiguous that no external aid is necessary for its proper construction and there, it has been indicated that, if termination of services of a workman is brought about for any reason whatsoever, it would be retrenchment, except if the case falls within any of the excepted categories and once, the case does not fall in any of the excepted categories, the termination of service, even if be according to automatic discharge from service under agreement, would none the less be retrenchment, within the meaning of section 2(oo).

26. The order of termination was marked Ext. M-16. Mr. Dutta claimed that the same was not received by the said employee, which fact was not perhaps correct, as the said exhibit has also been produced by the said employee being marked Ext. W-2. So the submissions of Mr. Dutta, there was no proof of service, cannot be accepted. Mr. Dutta was of course right in his submission that there was no power of adjustments of dues or any dues by the said Airlines under the terms as contained in Ext. M-8. Mr. Dutta, while on his submissions on incidents of retrenchment under section 2(oo) and applicability of section 25F, referred to the case of K. Rajendran Vs. The Director (Personnel), The Project and Equipment Corporation of India Ltd., New Delhi and Anr., 1992 Lab. I.C. 909, which has observed that sub-clause (bb) of Section 2(oo), which was added in 1984 is an exception, which must be interpreted normally. No doubt, the intention of the Parliament in incorporating sub-clause (bb) to section 2(oo) of the said Act, was to exclude certain categories of workmen from the definition of retrenchment. But, there is nothing in sub-clause (bb), which enables an unscrupulous employee to terminate the services of the workers on the ground of renewal of their contract, even when the work, for which they were employed, subsist. The exceptions as contained in sub-clause (bb) will have to be strictly construed and the said clause should be made applicable, only to such cases, where the work ceases with the employment or the post itself ceases to exist. It has further been indicated that clause (bb) cannot be made applicable to a case, when the employer resorts to contractual employment as a device to simply take it out of section 2(oo) of the said Act notwithstanding the fact that the work which the workmen were performing are still in existence. Mr. Dutta also referred to the case of S.S. Sambré Vs. Chief Regional Engineer, State Bank of India, Nagpur & Anr., 1992(1) LLJ 681.

27. As indicated earlier, Ext. M-1 or the terms thereof, were not and could not be denied by Mr. Dutta, but on a reference to Exs. M-12, he indicated that the steps as taken

were also not due and proper, as the said Exhibit admittedly shows the attendance of the said employee to be fair, so also his general conduct and inspite thereof, the probationary period of the said employee was extended for three months. In fact, Mr. Dutta pointed out that in the said Exhibit, there was no adverse remark against the said employee. In view of the above, it was claimed that the action as taken, was not due and bonafide." He also pointed out that thereafter, the said employee by Ext. M-5, asked for a chance to improve his conduct, which according to him, should have been, in all fairness, given and in not granting such opportunity, the said Airlines, have not also acted duly, bonafide, justly and specifically stated that his client is not surely asking for absorption, even though reinstatement, in terms of the determinations in the case of Hindusthan Tin Works Ltd. Vs. Its Employees, 1978(2) LLJ 474, could have been asked for. That was a case under Section 4K of the U.P. Industrial Disputes Act, 1947 and the same has indicated the criteria to be followed in awarding compensation, to those unjustly retrenched from services and when retrenchment is ordered with continuity of service in case where the workmen were ready to work, but kept away therefrom on account of invalid act of the employer. In the field of Industrial Jurisprudence, a declaration can be given that the termination of service is bad and the workman continues to be in service. On a reference to the case of Hindusthan Steel Ltd. Vs. State of Orissa & Ors., 1977(1) LLJ-1, Mr. Dutta pointed out that the earlier judgement in the case of State Bank of India Vs. N. Sundermony, 1976(1) LLJ 473 is still a good law, as the Supreme Court has indicated that there was no conflict between the said determination with that of Heriadosad Shivashenkar Subba Vs. A.D. Divakar, 1957 SCR 121 and the earlier determination, requires no reconsideration.

28. Apart from the determinations as indicated earlier, Mr. Dutta also made reference to the determinations in 1978(1) LLJ-1, 1980(2) LLJ 72, 1983(1) LLJ 70, 1985 Lab. I.C. 509 and 1986(1) LLJ 127, in support of his submissions as indicated earlier. I am not referring to those decisions specifically, as I have already dealt with the other main cases as referred to and relied on by him. In details, Mr. Dutta stated that the determinations in the case of 1992(1) LLJ 476, will distinguish all the cases as referred to and relied on by Mr. Mazumder, in the facts of this case.

29. Mr. Mazumder submitted in reply that Clause 13 of Ext. M-8 will not be applicable in this case and according to him under Clause of Ext. M-1, the said employee is still a probationer. It was his further submission that Clauses 4, 6.12, and 13 of Ext. M-8, should be read and considered together and not in isolation. He also submitted and as indicated earlier, as the case of the said employee, will come under Section 2(o) sub-clause (bb), so the case here, will not be one of retrenchment. He contended that the law relevant on the point and date, will be in terms of the decision in the case of Ruston of Hornsby Vs. T. B. Kadam, A.I.R. 1975 S.C. 2025. The reference to this case at this stage, was not very relevant and in reply to the submissions of Mr. Dutta that Section 2(o), clause (bb) was prospective and not retrospective. Mr. Mazumder of course contended that the tests for applying the provisions of section 2(o) Clause (bb), which was incorporated in 1984, would be, if the dispute was there on the date of incorporation of the said clause and in that case, the retrospective or prospective nature and character of the clause would be of immaterial consideration.

30. On the basis of the judgements as cited at the Bar, there cannot be any doubt that a Probationer, can neither claim to be confirmed and appointed automatically and more particularly, when he has not proved his worth to be considered for such or any appointment, since he has not completed his probationary period duly and satisfactorily. The fact whether the Probationer has duly or successfully completed his probationary period, will certainly depend on the assessment to be made by the employer, here in this case, in terms of Ext. M-1. In terms of the said Exhibit, as indicated earlier, attendance will certainly be a disqualification against the said employee.

31. The order of termination Ext. M-4 dated August 5, 1981 was certainly issued for poor attendance of the said employee. By Ext. M-10, the progress and ability of the said employee were found to be "poor" and his ability and

enthusiasm were adjudged to be "fair" and his case for confirmation was extended for six months. Such assessments were made on August 4, 1980. Then, on February 4, 1981, by Ext. M-11, the progress of the said employee was reported to be "average", "ability" satisfactory, enthusiasm "average", general conduct "good", but his attendance was opined as "very poor". Yet, he was given one more extension of the probationary period for six months, with the warning that he should improve his attendance during the said second extension. No exception was taken to the said Exhibit, but marking of Ext. M-10 was objected to. But, really, there will be no basis for such objection, as the said employee as indicated earlier without any due reservation, agreed about his short falls and short comings. It would then appear from Ext. M-12 dated June 8, 1981 that, his progress was found to be "average", ability and enthusiasm "fair", his attendance was found to be "fair" and general conduct "good", yet his probationary period was further extended by three months, with the necessary warnings, regarding improvements to be made. There was no indication whatsoever, regarding the improvements to be made and required and if at all, such improvements, should, on the basis of the Exhibit relates to progress, which was found to be "average" and as in respect of all other entries, he had a "fair" report and at least "good" in respect of his general conduct.

32. Clause 3 of Ext. M-1, no doubt authorised the said Airlines, to terminate the services of the said employee and that too without assigning any reason, if his work, conduct and ability was not upto the standard required by them or may extend the probationary period. In two assessments in Exts. M-10 and M-11, the remarks/assessments as shown, indicated that, the said Airlines could have terminated the probationary period of the said employee, but, they have not done so and instead, extended the probationary period, with due caution. But, the last progress Report Ext. M-12 dated June 8, 1981, shows that the said employee has certainly improved his workings, yet, the steps in terminating his probationary period as initiated in Ext. M-4, which was dated August 5, 1981 were taken and even though, the said employee was given chances to improve his conduct and he succeeded in doing so to a great extent. Thus, the action as taken by Ext. M-4, cannot be upheld, even though the said employee has agreed about his shortfalls and shortcomings in respect of attendance. The reasons of course, as given by him, were not very cogent, pertinent and bonafide, as under his terms of employment and conditions of service, there was no guarantee that he will be placed here at Calcutta, for looking after his old and ailing mother. Even if the said employee, as stated, is the only issue and there is none to look after his mother, yet, he cannot take such shield/cover and stand for absenting for so many days, as indicated earlier. The employer i.e. the said Airlines cannot be made to suffer for such difficulties of the said employee.

33. The order in Ext. M-4 dated August 5, 1981, in my view, had not duly complied with the necessary formalities, as the cheque for the concerned amount was not tendered along with the same. I am conscious that split second timing is not required or necessary in tendering the payments due, but such tendering, must be within a reasonable time, and must be part of the same transaction, which was not done and instead by Ext. M-16, which was dated August 7, 1981, the said employee was informed as a sum of Rs. 817.39p was recoverable from him, on account of his absence during the months of June and July 1981, so, the amount of Rs. 425/- which was earlier shown to be payable to him by Ext. M-4, representing 30 days basic pay in lieu of notice, was adjusted against his account. This action of the said Airlines, was appropriately claimed by Mr. Dutta and with which I agree, to be highly illegal and unjustified. If such amount as indicated, was due to the said Airlines from the said employee, the said Airlines should have taken steps against him earlier and furthermore, after making the payment of 30 days pay in lieu of notice, they could have, appropriately proceeded against him.

34. Thus, I feel that the action as taken or initiated through Exts. M-4 and M-16, were improper and irregular, as there was no due and necessary compliance with the statutory requirements in respect of such payment, in case of retrenchment for any reason whatsoever, and so, the action as taken through those Exhibits, cannot be upheld.

35. Therefore, we shall have to see and consider, what relief the said probationary employee, can claim? As indicated earlier, he cannot claim automatic absorption or confirmation and Mr. Dutta also made it quite clear that his client was not asking for absorption, but he has prayed for another chance, to further improve his attendance and there was every possibility for the same, as he has been able to secure some accommodation at Bombay, where he can take his mother. Such a prayer, to my mind, was reasonable and as such, I feel that the said Airlines, should have acceded to his prayer as to do so, even at this late stage, if that is possible. It is true that the probationary period of the said employee was terminated by Exts. M-4 and M-16 in 1981, thereafter, the Reference was made on July 28, 1988 and the hearing of the proceedings, has been completed in 1991 i.e. after about 11 years from such termination. The delay the hearing was occasioned for the reasons as appearing in the order sheet. It is also true that during the long gap, many things have happened or changed and so also the position of the parties, yet, I feel that for the views as indicated and the specific offer as made by the said employee, such chance as indicated and prayed for by him, should have been granted, in addition to the fact that the said employee should be paid 30 days wages in lieu of notice as above. The adjustment as sought to be made by the said Airlines was not authorised. Since the said employee was a probationer and he could not claim to be confirmed/absorbed automatically and as indicated, so, apart from the payments as aforesaid, he will not ordinarily be entitled to any further payments. But, admittedly he has been harassed and made to suffer by the illegal and irregular activities/orders and acts of the said Airlines, for no fault on his part. So, in my view, he should be given some reasonable compensation and a sum that of 12 months actual pay of the said employee be paid to him, as that will, in my view, serve the purposes of ends of justice.

36. The above is my Award. So, the Reference is answered in the affirmative and to the extent as indicated.

Dated, Calcutta,

The 13th November, 1992.

MANASH MATHI ROY, Presiding Officer

नई दिल्ली, 19 जनवरी, 1993

का. भा. 246.—आयोगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसूचन में, केन्द्रीय सरकार, मोरमुगाओ हैंडलिंग एजेंट्स एसोसिएशन के प्रबंधन से संबंधित निम्नलिखित आँकड़ों के बीच, अनुबंध में निहित औद्योगिक विवाद में ड्राफ्ट्स फिलिपे काउटो, आर्बिटर के पंचपट का प्रकाशन करने है, जो निम्नलिखित केन्द्रीय सरकार को 29-12-92 को प्राप्त हुआ था।

[नम्बर एन-36013/1/91-आई.आर. (मिस.)

बी. एम. डेविड, डेस्क अधिकारी

New Delhi, the 19th January, 1993

S.O. 246.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Dr. Gustavo Filipe Couto, Arbitrator as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Mormugao Handling Agents Association and their workmen, which was received by the Central Government on 29-12-1992

[No. L-36013/1/91-IR (Misc.)

B. M. DAVID, Desk Officer

ANNEXURE

BEFORE JUSTICE DR. GUSTAVO FILIPE
COUTO (RETD), THE ARBITRATOR

In the matter of Arbitration under Section 10A of the Industrial Disputes Act 1947.

AND

In the matter of differences between the Mormugao Handling Agents Association and its Workmen represented by the Transport & Dock Workers' Union

AWARD

1. Differences arose between the Mormugao Handling Agents Association and its workmen, represented by the Transport & Dock Workers Union, as regards the payment of wages and some other related benefits. The consequent industrial Dispute came up for conciliation before the Assistant Labour Commissioner (Central), Vasco da Gama, and ultimately, both the parties agreed to refer the matter, particularly the question of interpretation of Term 2 of the Settlement dated 23-6-1985, to Arbitrating (Exhibit C-5). Pursuant to this decision, by an agreement entered into under section 10-A of the Industrial Disputes Act, 1947 and forwarded to the Regional Labour Commissioner (Central), Bombay, (Exhibit C-6 Copy), both the parties settled the terms of Reference and chose me as the Sole Arbitrator to adjudicate the matter. Finally, by order dated 10-3-1992, made by the Government of India, Ministry of Labour, New Delhi, the aforesaid Industrial Dispute was referred to my arbitration on the terms which will be stated at appropriate time and with a direction to make the award "within a period of six months or within such further time as is extended by mutual agreement in writing". This specified period of six months expired on 10-9-1992, but by a written memorandum dated 22-8-1992 (Exhibit A-1), signed by both the parties, time to make the Award had been extended "upto 31-12-1992 or such further time by mutual agreement in case the arbitration proceedings are not completed".

2. The terms of reference read as under :—

"Having regard to conciliation settlements dated 23-6-1985 and 13-12-1988 between the management of Mormugao Handling Agents Association and their Workmen, whether the Workmen are entitled to wage benefits given to the Workmen of Mormugao Dock Labour Board from 1-1-1986 onwards, in addition to the benefit of rise or fall in Dearness Allowance given by the Employer-year?"

"Whether Workmen are justified in claiming such wage benefits after the settlement dated 13-12-1988 by the Employer and the Workmen?"

If not, what relief they are entitled to?"

3. These being the terms of Reference, it becomes clear that in a nut-shell, the whole dispute consists in whether or not the Workmen of Mormugao Handling Agents Association are entitled from 1-1-1986 onwards to wage benefits at par with those paid to the workers by the MDLB. The key to answer this question is in the Settlements signed on 23-6-1985 and 13-12-1988 by the management of Mormugao Handling Agents Association and by the Union representing the Workmen, and therefore, a proper and true interpretation of the relevant clauses of such Settlements is required.

ments becomes essential, an interpretation that in my view, is only possible by considering the attendant and surrounding circumstances which led to the signing of those Settlements, the meaning of relevant clauses as understood by the parties and how they acted upon them. In the premises, I felt it necessary and expedient to frame a few issues, thereby intending to cause the parties to lead evidence and make thus available the necessary data in that regard and enabling material for the determination of the real and true intention of the parties.

4. In addition to the voluminous documentary evidence, both parties adduced oral evidence, since Shri Baburao Shankarrao Bhonsule deposed on behalf of the Workmen and Shri Narayan Yeshwant Kumbhar for the opponent, Mormugao Handling Agents Association. This evidence, analysed and assessed in its entirety, clearly establishes that the work of shore handling cargo, i.e., the taking of cargo to and from, the pier, was being carried out in early eighties by casual workers, who were employed by individual Handling Agents, each of whom was shore handling cargo of a particular type, such as sugar, oil cakes, allumene, fertilisers, food grains, etc. These workers were supplied either by the Mormugao Port & Dock Labour Society or by some mukadams/Gang Leaders, or even engaged directly by the Handling Agents, and paid on piece rate basis. Some of them would get regular employment, while some others would, on many occasions, have no employment at all. This situation necessitated the regularization of the casual labour supplied and as such, the Workmen Dock Labour Board proposed a decasualisation scheme meant to give work to those workers who had been earlier engaged by the Handling Agents. Under this scheme, all those workers would be taken in a pool administered by the MDLB. The Central Government, however, rejected this proposal and suggested instead the formation of an Association of the Handling Agents and the creation of a Pool of casual workers who were doing shore handling of cargo and which would be managed by the said Association. Meetings for implementation of this suggestion were held with intervention of the parties concerned as well as of MDLB and MDT (Exhibit 0-7, Exhibit 0-8 and Exhibit 0-9). Finally, the Association of Handling Agents was forged in Aug. 1984 and the Workers' Pool in the next month of September, 1984. The existing wage structure was maintained. The Port & Dock Labour Co-operative Society, however, objected to the Pool and began to obstruct workers to join it. This unrest was finally settled by an agreement dated 22-11-1984, signed before the Regional Labour Commissioner. Under this Settlement, all the workers, including those who were members of the aforesaid Society, would join the Pool, work would be allotted to all members of the Pool and a list of all the Workers would be finalised. Such list was, in fact, finalised, but as there were several disputes and stoppages of work, the Regional Labour Commissioner held several conciliation meetings, not only to finalise the list of workers who would be members of the Pool, but also to settle the question of wages to be paid and other related benefits. These conciliation meetings led to the Settlement dated 23-6-1985 (Exhibit C-1), which

was signed on behalf of the workers by the representatives of three Unions, namely :—

- (1) The present claimant Transport & Dock Workers Union (HMS).
- (2) Mormugao Waterfront Workers Union (CITU), and
- (3) Goa Trade & Commerce Workers Union (AITUC),

being common ground that this Settlement was not preceded by a Charter of Demands submitted by any of those Unions on behalf of the Workmen. This settlement was valid for two years ending on 10-6-87, but its operation was extended, by mutual consent, for a further period of six months ending on 31st December, 1987.

5. Under this Settlement, 861 Workers were found fit and taken into the Pool. They were divided into two groups, namely :

- (A) Casual shore handling labourers other than those working on loading, unloading, slinging and stacking, etc., and
- (B) Casual shore handling labourers working in loading, unloading, stacking, etc.

The question of wages was settled in its Clause 2, which reads:

"2—Wages

2(a) It is agreed that :

The casual shore handling labourers, other than those working on loading, unloading, slinging and stacking, etc., who are mostly paid on time rate basis of wage payment, shall be paid at the rate of on total daily total rate wage at the rate of Rs. 32.50 for 8 hours work a day. Whereas, casual shore handling labourers on loading, unloading, stacking, etc. shall be continued to be paid wages as done hitherto, on piece rate system at following rates :

- (i) At the rate of 26 NP per bag not exceeding 50 kgs.
- (ii) At the rate of 32 NP per bag exceeding 50 kgs. but not exceeding 85 kgs.
- (iii) At the rate of 35 NP per bag exceeding 85 Kgs but not exceeding 100 kgs.

Besides the above, the Workmen in each of these categories above, shall be paid at the rate of 1 NP per bag towards productivity allowance so as to obtain higher productivity in the normal conditions.

2(b) The time rated wages at Clause 2(a) above shall be revised every six months in June and December to have effect of any rise or fall with effect from 1st July and 1st January each year for any rise or fall in wages at Mormugao Dock Labour Board, so as to increase or decrease by the same percentage on the above what is fixed at Clause 2(a) above.

6. A careful reading of the above Clause discloses that Category (A) was that of Workmen paid on time rate basis and Category (B) was constituted by those who were paid on piece rate basis, the time rate wages having been fixed at Rs. 32.50 per 8 hours work day and the piece rate wages on the basis of the weight of the bags to be carried. Now, witness Bhonsule stated that the wages agreed in the 1985 Settlement were based on the wages drawn by the Workmen employed by MDLB and consisted of four components, namely :—

- (a) Basic pay.
- (b) Fixed Dearness Allowance.
- (c) Variable Dearness Allowance, and
- (d) Special Dearness Allowance.

According to him, the minimum of Basic Pay of Rs. 550 of the Revised Scale of MDLB was considered plus Rs. 212.40 of fixed Dearness Allowance, Rs. 175.50 of Variable Dearness Allowance and Rs. 35.10 of Special Dearness Allowance to arrive at the figure of Rs. 32.50 as the daily time rate wages, for the total of those four components amounting to Rs. 973 was divided by 30 and the result of Rs. 32.43 rounded up to Rs. 32.50. Narayan Yeshwant Kumbhar while deposing on behalf of the Mormugao Handling Agents Association took, however, a different stand by saying that the figure of Rs. 32.50 was fixed through negotiations, for the Handling Agents desired to continue to pay for that kind of work Rs. 25 per day and the Union had been claiming Rs. 40 per day. There is no corroborative evidence in support of any of the above versions, but the arithmetical calculations made by the witness Bhonsule make me accept that in fact, the figure of Rs. 32.50 for the daily wages was arrived at by the Claimant Union in the manner described by him, although this figure was agreed upon by the Handling Agents Association through negotiations. But this circumstance is in no manner sufficient to make good the stand taken by same Bhonsule that the wages were fixed in the 1985 Settlement on the basis of wages paid by MDLB to its workmen. This circumstance indeed seems to be inconsequential, as other evidence indicate that the agreed wages are not at all linked with the wages paid by the MDLB.

7. It was already seen that when the Pool was formed, the existing pay structure was maintained (Exhibit 0—7 and Exhibit C—8) and the workers were divided into two categories, one being paid on time rate basis and the other on piece rate basis. Now, it flows from the evidence of Bhonsule himself that the category of piece rate paid workmen does not exist in the MDLB, for although he started saying that such category also exists in the MDLB, he clarified thereafter that "the MDLB workers are to load daily 70 tons of goods and are paid on daily wages", that "if they load any excess of 70 tons, then the same excess are paid at piece rate basis and at the rate of 23 paise per tons, and further that "the system adapted in the MDLB was not followed for the Pool workers, because these workers mostly handled general cargo". Therefore, by indication, Bhonsule conceded that the payment of 23 paise per ton was merely an incentive compensation paid to the time rate workers

for extra work done by them without altering their character of time wages workers. This being so, the cases of the Pool workers and of those of MDLB appear to stand on basically different footings, a circumstance that strongly indicates that the basis for fixing the wages of 1985 Settlement was not the wages which were being paid by the MDLB to its workers. No doubt, Clause 2(b) of 1985 Settlement specifically provides that the agreed rate wages shall be revised every six months in June and December to have effect of any rise or fall for any rise and fall in wages at MDLB has to increase or decrease by the same percentage on what was agreed. The effect of this sub-clause, which otherwise is solely applicable to the Category (A) of the Pool Workers (time rate workers), is however, entirely different as will be seen at appropriate time and it does not conclusively establish that the wages were fixed in the 1985 Settlement on the basis of the wages drawn by the workers employed by the MDLB.

8. It is an admitted position and common ground that the 1985 Settlement was signed on behalf of the Pool Workers by the representatives of three Unions, including the Claimant Union; that prior to arriving at such Settlement, there was no Charter of Demands submitted on behalf of the Pool Workers; and that the question of wages and related benefits was settled in the course of several conciliation meetings held by the Regional Labour Commissioner. The relevant minutes were not produced and as such, I am unable to know what actually transpired in the course of such meetings. The subsequent conduct of the parties becomes thus not only most relevant, but also an invaluable element to determine the question at hand, specially when nowhere in the 1985 Settlement it is stated that the wages of the Pool Workers were to be paid at par with the wages paid to the MDLB workers.

9. It is not denied that the Opponents Mormugao Handling Agents Association, had been making the payment of wages to the Pool Workers by following strictly the liberal meaning conveyed by the words used in clause 2 of the 1985 Settlement and that the revision of wages contemplated in Clause 2(b) was made considering only the effect of any rise or fall in the Consumers Price Index in order to fix the amount of Variable Dearness Allowance (Exhibit C-10), the other components of wages, namely the Basic Pay, Fixed Dearness Allowance and Special Dearness Allowance, having been always constant and the same throughout the operative period of the 1985 Settlement. Admittedly, no objections to this interpretation and understanding of this relevant clause of the said Settlement were raised on behalf of the Pool workers by any of the Unions who were representing them, particularly by the present Claimant Union and also no dispute in that regard was raised during its operative period, although there were changes in the Basic Pay and in the wages of MDLB in the years 1986 and 1987 and although according to Bhonsule himself, at least about 1/3rd of the Pool workers were throughout members of the Claimant Union. It was only on 20-10-1987 that the Claimant Union wrote a letter (Exhibit C-3) to the Opponent Association demanding the payment of interim relief, without however raising any other

dispute. But even this demand was not pursued as, according to Bhonsule, by that time, many of the workers who were members of the Claimant Union switched affiliation and the majority of the Pool Workers joined the Port & Dock Employees Union. This Union however neither pursued the said demand, nor raised any other kind of demand pending the operative period of 1985 Settlement, including its extended period, which came to an end on 31-12-1987. No doubt, the said Union as well as the Claimant Union submitted their Charter of Demands after that, but once again, neither of the unions claimed that wages under the 1985 Settlement ought to have been paid at par with MDLB workers, nor they claimed the payment of the interim relief. Opponent Association submitted their counter proposal (Exhibit 0-12) and finally, a fresh Settlement was signed on 13-12-1988 between the Mormugao Handling Agents Association and the Workmen represented by the Goa Port & Dock Employees Union to whom the majority of the Pool Workers were affiliated at the time. The Claimant Union, however, chose to abstain from taking part in the conciliation proceedings, although allegedly holding the membership of about 1/3rd of the Pool Workers, perhaps for reasons which can be traced to Unions' rivalry. Be that as it may, the fact remaining that no demand for payment of wages at par with wages drawn by MDLB Workers was ever made pending the operative period of 1985 Settlement, and even in the Charter of Demands that led to 1988 Settlement. Further, even the demand for payment of interim relief granted by the Notification dated 6-10-1986 was not pursued and both sides acted upon the 1985 Settlement, as well as upon the 1988 Settlement as if there was no link at all as regards the wages payable with the wages paid by MDLB. It appears that by the middle of the year 1990, the majority of the Pool Workers joined the Claimant Union and it was then, and only then, that a formal dispute was raised making such claim and the Workers went on 5-6-1990, on a strike which ended by the parties signing the memorandum of understanding (Exhibit C-5) before the Assistant Labour Commissioner on 22-8-1990. And on the expiry of the operative period of 1988 Settlement, a new settlement was signed on 1-11-1991 by both parties, which Settlement is operative from 1-11-1990 (Exhibit C-7).

10. I may also be mentioned that, according to Bhonsule, the casual workers were being paid Rs. 25 per day in July, 1984 and though the minimum Basic Pay of MDLB Workers was at that time of Rs. 550 per month, that on 1-7-1984, the MDLB Workers were being paid the Basis Pay of Rs. 340 plus Rs. 186.90 of Fixed Dearness Allowance plus Rs. 219.70 of Variable Dearness Allowance and that in terms of the settlement Exhibit C-2, the revised pay scale was starting as on 1-4-1984 at Rs. 550, this Settlement has not, at all, been considered for the purpose of fixing the wages in the 1985 Settlement, the pay considered being that as on 1-1-1981.

11. Thus, having in mind the above evidence as regards the attendant circumstances that led to the 1985 Settlement and how the parties acted upon, it becomes clear that Clause 2 of the 1985 Settlement was understood by them as not being based on the

wages paid by the MDLB to its Workers, except that as regards the time rate wages, the same were to be revised every six months in June and December according to the rise and fall in wages as the MDLB. This rise or fall based on the Consumers Price Index was, however, affecting only the Variable Dearness Allowance, as admittedly, the other components, namely Basic Pay, Fixed Dearness Allowance and Special Dearness Allowance, continued always constant and the same. This finding is fortified by the fact that no claim was made in the Charter of Demands that led to the 1983 Settlement that under the 1985 Settlement, wages had to be paid at par with the wages paid by the MDLB and also by the omission to insert a specific clause in respect of this kind of payment of wages in the 1988 Settlement.

12. By Notification No. LB-120115/87-80(ii) dated 6-10-1987, the Govt. of India, Ministry of Surface Transport (Labour Division) granted interim relief with effect from 1-1-1986 to Class III and Class IV employees and Workers of Major Port Trusts and Dock Labour Boards who were on Industrial Dearness Allowance pattern. Para 3 of the said Notification clarifies that the granted relief is purely interim in nature and is to be absorbed in the wage Settlement to be negotiated for revision of the structure of Port & Dock Workers to be effective from 1-1-1986. The wording of this Notification indicates that the grant of such purely interim relief was necessitated by the urgent need to up-date the wages, which were being paid, by incorporating it in the Dearness Allowance. But, though the Notification specifically states that this interim relief is granted to "Class III and Class IV employees of Major Port Trust & Dock Labour Boards, and as such, it allows the inference that the employees of the entities other than Major Port Trusts & Dock Labour Boards are falling outside its sweep, I am of the considered view that, in fairness, it is also attracted to the case of the Pool Workers employed by the opponent Association on account of Clause 2(b) of 1985 Settlement, which speaks of review of wages considering the rise and fall in the MDLB which affects the Variable Dearness Allowance. Besides, bearing in mind the obvious reasons that caused the Government of India to grant such interim relief, Justice, Equity and Good Conscience demand that such benefits be extended also to the Pool Workers. However, only those Pool Workers who were in employment of the opponent on or before 1-1-1986 are entitled to this benefit for the period commencing on 1-1-1986 and ending on 1-1-1988 in view of para 3 of the aforesaid Notification.

13. Thus, for the above reasons, I answer in the affirmative the issues No. 1, 3, 4, 5 (part), 6, 7, and 8 and in the negative the issue No. 2, Issue No. 5 is answered in the affirmative only in-so-far as the Notification dated 6-10-1987 is applicable to the Pool Workers.

14. As a result and having regard to the Settlements dated 23-6-1985 and 13-12-1988, I hold that the Workmen employed by the Mormugao Handling Agents Association are not entitled to the wage benefits given to the Workmen of MDLB from 1-1-1986 in addition to the benefits of rise or fall in Dearness Allowance

given by the employer. I further hold that the same workmen are not justified in claiming such wage benefits after the 1988 Settlement. However, those Pool Workers who were in the opponents' employment on or before 1-1-1986 are entitled to the interim relief granted by the Notification dated 6-10-1987 from 1-1-1986 to 31-12-1987.

15. I, therefore, do hereby make and publish this my Award in writing as regards the matters referred to me as follows :

I award and direct—

- (i) That the Pool Workers employed by the opponent Mormugao Handling Agents Association are not entitled to the wage benefits given by the MDLB to its workers from 1-1-1986 onwards, in addition to the rise or

fall in Dearness Allowance given by the employer;

- (ii) That they are not at all justified to claim such benefits, specially after the 1988 Settlement which is also binding on the claimant Transport & Dock Workers Union; and
- (iii) That the Pool Workers, employed by the Mormugao Handling Agents Association on or before 1-1-1986 be paid the interim relief granted by the Government of India by Notification dated 6-10-1987 from 1-1-1986 and 1-1-1988.

In witness whereof, I, the said Justice Dr. Gustavo Filipe Couto (Retd.), have hereto put my signature on this 28th day of November, 1992.

JUSTICE DR. GUSTAVO FILIPE COUTOR
(Retd.) Arbitrator

